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Idaho Code Commission

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## PUBLISHER'S NOTE

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Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2012 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports

Pacific Reporter, 3rd Series

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Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

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## USER'S GUIDE

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To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.

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**ADJOURNMENT DATES OF SESSIONS OF  
LEGISLATURE**

Year	Adjournment Date
2006 .....	April 11, 2006
2006 (E.S.) .....	August 25, 2006
2007 .....	March 30, 2007
2008 .....	April 2, 2008
2009 .....	May 8, 2009
2010 .....	March 29, 2010
2011 .....	April 7, 2011
2012 .....	March 29, 2012

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## TITLE 28

# COMMERCIAL TRANSACTIONS

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24. AGREEMENTS BETWEEN SUPPLIERS AND DEALERS OF FARM EQUIPMENT, §§ 28-24-101, 28-24-102, 28-24-104B, 28-24-105, 28-24-108.
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### MONEY OF ACCOUNT AND INTEREST

#### 28-22-104. Legal rate of interest.

**Cited in:** *Meyers v. Hansen*, 148 Idaho 283, 221 P.3d 81 (2009).

#### ANALYSIS

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—Accrual date of action.

Calculation of award.

Cross-appeal not required.

Interest.

—After claim becomes due.

—Appropriate rate.

—Denied.

—Prejudgment.

#### Amendment of Section.

##### —Accrual Date of Action.

To the extent that *Brinkman v. Aid Ins. Co.*, 115 Idaho 346, 766 P.2d 1227 (1988) and its progeny provide for prejudgment interest from the date of the accident, the Supreme Court of Idaho overruled them. In insurance cases, money becomes due as provided under the express terms of the insurance contract. *Greenough v. Farm Bureau Mut. Ins. Co.*, 142 Idaho 589, 130 P.3d 1127 (2006).

##### Calculation of Award.

Bankruptcy court properly calculated the prejudgment interest due to a debtor from her insurer. Under this section, the debtor's insurer became obligated to pay the debtor underinsured motorist (UIM) benefits upon payment by the UIM's insurer; there is no thirty-day grace period, under § 41-1839, before calculation of prejudgment interest. *Jones v. State Farm Mut. Auto Ins.* (In re

*Jones*), 2009 Bankr. LEXIS 5520 (D. Idaho June 22, 2009).

##### Cross-Appeal Not Required.

Where defendant lien holder raised the equitable subordination issue but the district court declined to apply equitable subordination and instead applied debt recharacterization to plaintiff developer's advance, since the lien holder, arguing on appeal for equitable subordination if the district court's grant of summary judgment to it was reversed, was not seeking to reverse or vacate the judgment, nor was it seeking a reversal of finding upon which the judgment was based, Idaho App. R. 15 did not apply to require a cross-appeal by the lien holder. *Jones v. State Farm Mutual Auto Ins. Co.* (In re *Jones*), 2009 Bankr. LEXIS 5518 (Bankr. D. Idaho Apr. 9, 2009).

##### Interest.

Trial court did not abuse its discretion in denying trust beneficiaries' request for prejudgment interest where the trial court acted within the boundaries of its discretion, and consistently with the applicable legal standards by examining each factor set out in this section. *Taylor v. Maile*, 146 Idaho 705, 201 P.3d 1282 (2009).

##### —After Claim Becomes Due.

Where defendant entered an *Alford* plea to lewd conduct with a minor under sixteen, and, as part of his sentence, was required to pay a \$5,000 fine, the fine imposed on defendant was subject to accrual of interest until

paid in full. *State v. Hillman*, 143 Idaho 295, 141 P.3d 1164 (Ct. App. 2006).

—Appropriate Rate.

Idaho public utilities commission declined to impose a 12 percent interest rate that was sought by paging companies in an action seeking refunds for payment for facilities' use brought against a telephone company; the paging companies argued that the commission applied the wrong interest rate. The supreme court agreed because § 62-616 was not broad enough to allow the commission to create an interest rate or to apply the IDAPA 31.41.01.106.01. *Ryder v. Idaho PUC* (In re *Ryder*), 141 Idaho 918, 120 P.3d 736 (2005).

—Denied.

Denial of prejudgment interest on an unjust enrichment claim was proper where a decedent's widow showed that she had sold the decedent's son other property at a steeply discounted price as compensation for his contributions to the purchase and improvement of a ranch, the district court had reduced the son's overall claim in consideration of the

benefit he had received in the out-of-state transaction, and, as a result, the countervailing equitable factor asserted by the widow rendered the amount to which the son was entitled unascertainable until the district court rendered its decision. *Ross v. Ross*, 145 Idaho 274, 178 P.3d 639 (Ct. App. 2007).

—Prejudgment.

This section did not overcome the presumption of the state's sovereign immunity, and § 67-5316(4) spoke only of "pay" and made no mention of interest; this language did not qualify as a clear waiver of sovereign immunity; therefore, there was no basis for an award of prejudgment interest to the employee against the Idaho department of correction. *Sanchez v. State*, 143 Idaho 239, 141 P.3d 1108 (2006).

Award of prejudgment interest in an arbitration award of benefits under an underinsured motorist policy, although arguably erroneous, could not be modified by a reviewing court because it was not a mathematical error. *Cranney v. Mut. of Enumclaw Ins. Co.*, 145 Idaho 6, 175 P.3d 168 (2007).

CHAPTER 23

REPURCHASE OF FARM MACHINERY AND EQUIPMENT UPON TERMINATION OF CONTRACT

SECTION.

- 28-23-101. Repurchase of farm machinery, equipment, construction equipment, implements, attachments, accessories and parts upon termination of contract and obligation to repurchase.
- 28-23-102. Repurchase of repair parts.
- 28-23-103. Provisions of contract supplemented.
- 28-23-104. Death of dealer — Repurchase from heirs.

SECTION.

- 28-23-105. Failure to pay sums specified on cancellation of contracts — Liability.
- 28-23-107. Definition.
- 28-23-108. Guaranty and security agreement notice requirements.
- 28-23-110. Penalty for failure to give notice or obtain consent.
- 28-23-112. Jurisdiction — Venue.
- 28-23-113. Definitions.

**28-23-101. Repurchase of farm machinery, equipment, construction equipment, implements, attachments, accessories and parts upon termination of contract and obligation to repurchase. —** Whenever any person, firm, or corporation engaged in the business of selling and retailing farm implements or equipment, or repair parts for farm implements or equipment, enters into a written or parol contract, sales agreement or security agreement whereby the retailer agrees with any wholesaler, manufacturer or distributor of farm implements or equipment, machinery, attachments, accessories or repair parts to maintain a stock of parts which may include, but is not limited to, complete or whole machines, attachments, or demonstration and rental equipment and thereafter the written or parol contract, sales agreement or security agreement is terminated, canceled or discontinued, then the wholesaler, manufacturer or



distributor shall pay to the retailer or credit to the retailer's account, if the retailer has outstanding any sums owing the wholesaler, manufacturer or distributor, unless the retailer should desire and has a contractual right to keep such merchandise, a sum equal to one hundred percent (100%) of the net cost of all unused, unsold and undamaged complete farm implements or equipment, machinery or repair parts and stock of parts, attachments in new condition which have been purchased by the retailer from the wholesaler, manufacturer or distributor within the thirty-six (36) months immediately preceding notification by either party of intent to cancel or discontinue the contract, including the transportation charges to the retailer. The payment or credit for demonstration or rental equipment that has not been retailed to an end user is a sum equal to the depreciated value of the equipment. The wholesaler, manufacturer or distributor shall pay to the retailer a reasonable reimbursement for services performed in connection with the assembly and predelivery inspections of the farm equipment and attachments. The supplier assumes ownership of farm implements or equipment, machinery or repair parts and stock FOB the dealer location.

A supplier must repurchase any specific data processing hardware, software, telecommunications equipment and computer communications hardware specifically required by the supplier to meet the supplier's minimum requirements and purchased by the dealer in the prior five (5) years and held by the dealer on the date of termination. The purchase price is the original net cost to the dealer, less twenty percent (20%) per year.

**History.**

1975, ch. 97, § 1, p. 197; am. 1986, ch. 248, § 1, p. 668; am. 2005, ch. 238, § 1, p. 730; am. 2011, ch. 270, § 2, p. 730.

**Compiler's Notes.** The 2011 amendment, by ch. 270, inserted "equipment, construction equipment" in the section heading; inserted

"or equipment" throughout the first paragraph; inserted "unsold and undamaged" near the end of the first sentence; and deleted "to which the supplier and the retailer have agreed" following "value of the equipment" in the second sentence in the first paragraph.

**28-23-102. Repurchase of repair parts.** — Whenever any person, firm, or corporation engaged in the business of selling and retailing farm implements or equipment, or repair parts for farm implements or equipment, enters into a written or parol contract, sales agreement or security agreement whereby the retailer agrees with any wholesaler, manufacturer or distributor of farm implements or equipment, machinery, attachments, accessories or repair parts to maintain a stock of parts or complete or whole machines, or attachments, manuals and repair manuals and thereafter the written or parol contract, sales agreement or security agreement is terminated, canceled or discontinued, then the wholesaler, manufacturer or distributor shall pay to the retailer or credit to the retailer's account, if the retailer has outstanding any sums owing the wholesaler, manufacturer or distributor, unless the retailer should desire and has a contractual right to keep such merchandise, a sum equal to one hundred percent (100%) of the current net prices, including the transportation charges from the retailer to the wholesaler, manufacturer or distributor which have been paid by the retailer, or invoiced to a retailer's account by the wholesaler, manufacturer or distributor, on manuals and repair manuals, repair parts, including

superseded or previously included parts listed in current price lists or catalogs or electronic catalogs in use, or previously used within thirty-six (36) months prior to the latest parts price list issue date by the wholesaler, manufacturer or distributor on the date of cancellation or discontinuance of the contract, which parts had previously been purchased by the retailer from the wholesaler, manufacturer or distributor and are held by the retailer on the date of the cancellation or discontinuance of the contract or thereafter received by the retailer from the wholesaler, manufacturer or distributor.

The wholesaler, manufacturer or distributor shall also pay the retailer or credit to his account a sum equal to five percent (5%) of the current net price of all parts returned for the handling, packing and loading of the parts back to the wholesaler, manufacturer or distributor unless the wholesaler, manufacturer or distributor elects to perform inventorying, packing and loading of the parts themselves.

Upon the payment or allowance of credit to the retailer's account of the sum required by this section and section 28-23-101, Idaho Code, the title to the farm implements, equipment, machinery, attachments, accessories or repair parts shall pass to the manufacturer, wholesaler or distributor making the payment or allowing the credit and the manufacturer, wholesaler or distributor shall be entitled to the possession of the farm implements, equipment, machinery, attachments, accessories or repair parts. Title to farm implements, equipment, attachments, accessories and repair parts is transferred to the supplier FOB the dealer location. The provisions of this section shall apply to any part return adjustment agreement made between a dealer and a supplier. All payments or allowances of credit due retailers under this section shall be paid or credited by the manufacturer, wholesaler, or distributor within ninety (90) days from the termination date of the dealer agreement. After the ninety (90) days all sums of credits due shall include interest at the rate specified in section 28-22-104(1), Idaho Code. However, this section and section 28-23-101, Idaho Code, shall not in any way affect any security interest which the wholesaler, manufacturer or distributor may have in the inventory of the retailer.

A supplier shall repurchase at one hundred percent (100%) of net dealer cost, manuals and repair manuals purchased in the previous six (6) years and at fifty percent (50%) for manuals and repair manuals purchased in the previous seven (7) through twelve (12) years as required by the supplier and held by the dealer on the date of termination. Manuals and repair manuals must be unique to the supplier's product line and must be in complete and in readable condition.

A supplier must repurchase, and the dealer must sell to the supplier, specialized repair tools. As applied in this section, "specialized repair tools" is defined as those tools required by the supplier and unique to the diagnosis or repair of the supplier's products. For specialized repair tools that are in new, unused condition and are applicable to the supplier's current products, the purchase price is one hundred percent (100%) of the original net cost to the dealer. For all other specialized repair tools, in complete and resalable condition, the purchase price is the original net cost to the dealer less twenty



percent (20%) per year depreciation, but not less than fifty percent (50%) of the original purchase price.

A supplier must repurchase, and the dealer must sell to the supplier, current signage. As used in this section, "current signage" means the principal outdoor signage required by the supplier that displays the supplier's current logo or similar exclusive identifier, and that identifies the dealer as representing either the supplier or the supplier's products, or both. The purchase price shall be the original net cost to the dealer less twenty percent (20%) per year, but may in no case be less than fifty percent (50%) of the original cost to the dealer.

**History.**

1975, ch. 97, § 2, p. 197; am. 1986, ch. 248, § 2, p. 668; am. 2005, ch. 238, § 2, p. 730; am. 2011, ch. 270, § 3, p. 730.

**Compiler's Notes.** The 2011 amendment, by ch. 270, inserted "equipment" or "or equipment" throughout the section; and, in the

fourth sentence in the third paragraph, substituted "within (90) days from the termination date of the dealer agreement" for "within (90) days after the return of the farm implements, farm machinery, attachments, accessories or repair parts."

**28-23-103. Provisions of contract supplemented.** — The provisions of this section shall be supplemental to any agreement between the retailer and the manufacturer, wholesaler or distributor covering the return of farm implements, equipment, machinery, attachments or repair parts. The retailer can elect to pursue either his contract remedy or the remedy provided herein, and an election by the retailer to pursue his contract remedy shall not bar his right to the remedy provided herein as to those farm implements, equipment, machinery, attachments or repair parts not affected by the contract remedy. Notwithstanding anything contained herein, the rights of a manufacturer, wholesaler or distributor to charge back to the retailer's account amounts previously paid or credited as a discount incident to the retailer's purchase of goods shall not be affected. Further, any repurchase hereunder shall not be subject to the provisions of the bulk sales law.

**History.**

1975, ch. 97, § 3, p. 197; am. 2011, ch. 270, § 4, p. 730.

**Compiler's Notes.** The 2011 amendment,

by ch. 270, in the first and second sentences, inserted "equipment" and substituted "or repair parts" for "and repair parts."

**28-23-104. Death of dealer — Repurchase from heirs.** — In the event of the death of the retail dealer or a stockholder in a corporation operating a retail dealership in the business of selling and retailing farm implements, equipment, machinery, attachments or repair parts therefor, at the election of the dealer or corporation, the manufacturer, wholesaler or distributor shall, unless the heir or heirs of the deceased elect to continue to operate the dealership, repurchase the merchandise from the heir or heirs upon the same terms and conditions as are otherwise provided in this chapter. In the event the heir or heirs do not agree to continue to operate the retail dealership, it shall be deemed a cancellation or discontinuance of the contract by the retailer under the provisions of sections 28-23-101 and 28-23-102, Idaho Code.

**History.**

1975, ch. 97, § 4, p. 197; am. 2011, ch. 270, § 5, p. 730.

**Compiler's Notes.** The 2011 amendment,

by ch. 270, in the first sentence, inserted "equipment" and substituted "this chapter" for "this act."

**28-23-105. Failure to pay sums specified on cancellation of contracts — Liability.** — In the event that any manufacturer, wholesaler or distributor of farm implements, equipment, machinery, attachments, accessories or repair parts, upon the cancellation of a contract by either a retailer or such manufacturer, wholesaler or distributor, fails or refuses to make payment to the dealer or his heir or heirs as required by the provisions of this chapter, or any other violations of the provisions of this chapter, the manufacturer, wholesaler or distributor shall be liable in a civil action to be brought by the retailer or his heir or heirs for (a) one hundred percent (100%) of the net cost of the farm implements, equipment, machinery, attachments and accessories, (b) transportation charges required in section 28-23-102, Idaho Code, which have been paid by the retailer, or invoiced to the retailer's account, (c) one hundred percent (100%) of the current net price of repair parts, (d) five percent (5%) for handling, packing and loading, if applicable, (e) one hundred percent (100%) of the current net price for manuals and repair manuals, (f) reasonable reimbursement for services performed in connection with assembly and predelivery inspections of the equipment and (g) additionally, any judgment rendered by a court of competent jurisdiction for the plaintiff in a suit filed pursuant to this section may include damages in the amount of two (2) times the compensatory damages found due and owing [owing]. A person, firm or corporation which brings an action under this section must commence the action in the county in which the principal place of business of the retailer is located.

**History.**

1975, ch. 97, § 5, p. 197; am. 2005, ch. 238, § 3, p. 730; am. 2011, ch. 270, § 6, p. 730.

**Compiler's Notes.** The bracketed insertion at the end of the next-to-last sentence was added by the compiler to supply the probable intended word.

The 2011 amendment, by ch. 270, in the first sentence, twice inserted "equipment," substituted "or repair parts" for "and repair

parts" and "required by the provisions of this chapter, or any other violations of the provisions of this chapter" for "required by this section" and added "and (g) additionally, any judgment rendered by a court of competent jurisdiction for the plaintiff in a law suit filed pursuant to this section may include damages in the amount of two (2) times the compensatory damages found due and owing."

**28-23-107. Definition.** — For the purposes of this chapter, "farm implements" means every vehicle designed or adapted and used exclusively for agricultural operations and only incidentally operated or used upon the highways and all other consumer products supplied by the wholesaler, manufacturer or distributor of farm implements, equipment, machinery, attachments or repair parts to the retailer pursuant to a written or oral contract, sales agreement or security agreement.

**History.**

1975, ch. 97, § 7, p. 197; am. 2011, ch. 270, § 7, p. 730.

**Compiler's Notes.** The 2011 amendment, by ch. 270, substituted "this chapter" for "this act" and inserted "equipment" and "or oral."

**28-23-108. Guaranty and security agreement notice requirements.** — All wholesalers, manufacturers or distributors of farm implements, equipment, machinery, attachments, accessories or repair parts shall give the retailer a minimum of ninety (90) days' notice in writing and obtain consent from the dealer before changing the time and manner of payment of any indebtedness owed by retailer to manufacturer, distributor or wholesaler, and before taking and making any changes in notes or security for any indebtedness, and before releasing or adding additional guarantors, and before granting renewals or extensions of such indebtedness.

**History.**

1975, ch. 97, § 8, p. 197; am. 2005, ch. 238, § 5, p. 730; am. 2011, ch. 270, § 8, p. 730.

**Compiler's Notes.**

The 2011 amendment, by ch. 270, inserted "equipment" near the beginning of the section.

**28-23-110. Penalty for failure to give notice or obtain consent.** — In the event that any manufacturer, wholesaler or distributor of farm implements, equipment, machinery, attachments and repair parts fails to give notice or obtain consent pursuant to section 28-23-108, Idaho Code, or fails or refuses to comply with section 28-23-109, Idaho Code, the guaranty or security agreement thereby affected will be deemed canceled and terminated.

**History.**

1975, ch. 97, § 10, p. 197; am. 2011, ch. 270, § 9, p. 730.

**Compiler's Notes.**

The 2011 amendment, by ch. 270, inserted "equipment" near the middle of the section.

**28-23-112. Jurisdiction — Venue.** — (1) The courts of this state shall have jurisdiction over any legal dispute between a wholesaler, manufacturer or distributor of farm implements or equipment, machinery, repair parts, stock parts and attachments located in or outside this state and an equipment dealer located in this state. The laws of the state of Idaho shall exclusively apply to such disputes.

(2) Venue for a dispute as provided in subsection (1) of this section shall be in the judicial district wherein the dealer's principal place of business is located.

**History.**

I.C., § 28-23-112, as added by 2011, ch. 270, § 10, p. 730.

**28-23-113. Definitions.** — The definitions set forth in section 28-24-102, Idaho Code, shall apply to the provisions of this chapter.

**History.**

I.C., § 28-23-113, as added by 2011, ch. 270, § 11, p. 730.



## CHAPTER 24

## AGREEMENTS BETWEEN SUPPLIERS AND DEALERS OF FARM EQUIPMENT

PART 1. AGREEMENTS BETWEEN SUPPLIERS AND  
DEALERS OF FARM EQUIPMENT

## SECTION.

28-24-101. Legislative findings and intent.

## SECTION.

28-24-102. Definitions.

28-24-104B. Warranty claims.

28-24-105. Remedies and enforcement.

28-24-108. Jurisdiction — Venue.

## PART 1. AGREEMENTS BETWEEN SUPPLIERS AND DEALERS OF FARM EQUIPMENT

**28-24-101. Legislative findings and intent.** — The legislature of this state finds that the retail distribution and sale of agricultural equipment, outdoor power equipment, industrial equipment and construction equipment utilizing independent retail businesses operating under agreements with the manufacturers and distributors thereof, vitally affects the general economy of the state, public interests and public welfare and that it is necessary to regulate the business relations between independent dealers and the equipment manufacturers, wholesalers and distributors.

**History.**

I.C., § 28-24-101, as added by 1990, ch. 267, § 1, p. 750; am. 2011, ch. 270, § 13, p. 730.

**Compiler's Notes.**

The 2011 amendment, by ch. 270, inserted "outdoor power equipment, industrial equipment and construction equipment."

**28-24-102. Definitions.** — As used in this chapter:

(1) "Assigned area of responsibility" means the geographic region for which a particular dealer is responsible for the marketing, selling, leasing or servicing of equipment pursuant to a dealer agreement as assigned by the supplier.

(2) "Continuing commercial relationship" means any relationship in which the equipment dealer has been granted the right to sell or service equipment manufactured by supplier.

(3) "Dealer agreement" means a contract or agreement, either expressed or implied, whether oral or written, between a supplier and an equipment dealer, by which the equipment dealer is granted the right to sell, distribute or service the supplier's equipment, where there is a continuing commercial relationship between the supplier and the equipment dealer.

(4) "Demonstration and/or rental equipment" is equipment that has been used but has not been sold to an end user.

(5) "Equipment" means machines designed for or adapted and used for agriculture, horticulture, livestock and grazing and related industries but not exclusive to agricultural use. Equipment also includes:

(a) "All-terrain vehicles" or "ATVs," including three-wheeled and four-wheeled motorized vehicles, generally characterized by large, low-pressure tires, a seat designed to be straddled by the operator, and handlebars for steering. All-terrain vehicles are intended for off-road use.

(b) "Outdoor power equipment" means equipment powered by a two-cycle or four-cycle gas or diesel engine, or electric motor, which is used to maintain commercial, public or residential lawns and gardens or used in landscape, turf, golf course or plant nursery maintenance.

(c) "Industrial and construction equipment" means equipment used in building and maintaining structures and roads including, but not limited to, loaders, loader backhoes, wheel loaders, crawlers, graders and excavators.

(6) "Equipment dealer," "dealer" or "equipment dealership" means any person, partnership, corporation, association or other form of business enterprise, primarily engaged in the retail sale and/or service of equipment in this state, pursuant to any oral or written agreement for a definite or indefinite period of time in which there is a continuing commercial relationship in the marketing of the equipment or related services. "Equipment dealer," "dealer" or "equipment dealership" does not include an individual, partnership or corporation that:

(a) Is primarily engaged in the retail sale and service of industrial and construction equipment;

(b) Has purchased seventy-five percent (75%) or more of the dealer's total new product inventory from a single supplier under all agreements with that supplier; and

(c) Has a total annual average sales volume in excess of twenty million dollars (\$20,000,000) for the preceding three (3) years with that single supplier for the territory for which the dealer is responsible.

(7) "Good cause" means failure by an equipment dealer to substantially comply with essential and reasonable requirements imposed upon the equipment dealer by the dealer agreement, provided, such requirements are not different from those requirements imposed on other similarly situated equipment dealers in the state either by their terms or in the manner of their enforcement.

(8) "Supplier" means the manufacturer, wholesaler or distributor of the equipment to be sold by the equipment dealer, or any successor in interest to or assignee of the supplier. A successor in interest includes any purchaser of assets or stock, any surviving corporation resulting from merger or liquidation, any receiver or any trustee of the original supplier.

(9) "Used equipment" means equipment that has been sold or retailed to an end user and money has been exchanged between the end user and the equipment dealer.

(10) "Warranty claim" means a claim for payment submitted by an equipment dealer to a supplier for service, parts or complete components, or any or all of the three (3), provided to a customer under a:

(a) Warranty issued by the supplier; or

(b) Recall or modification order issued by the supplier.

#### **History.**

I.C., § 28-24-102, as added by 1990, ch. 267, § 1, p. 750; am. 2005, ch. 238, § 6, p. 730; am. 2011, ch. 270, § 14, p. 730.

**Compiler's Notes.** The 2011 amendment, by ch. 270, added paragraph (5)(c); in subsection (6), in the introductory paragraph, inserted "dealer" and added the last sentence;

added paragraphs (6)(a) through (6)(c); added subsection (9); and redesignated former subsection (9) as subsection (10), and therein substituted "service, parts or complete components, or any or all of the three (3)" for "service or parts, or both" in the introductory paragraph.

**28-24-104B. Warranty claims.** — (1) An equipment dealer may sub-

mit a warranty claim to a supplier if a warranty defect is identified and documented prior to the expiration of a supplier's warranty:

- (a) While a dealer agreement is in effect; or
- (b) After the termination of a dealer agreement if the claim is for work performed while the dealer agreement was in effect.

(2) A supplier shall accept or reject a warranty claim submitted under subsection (1) of this section, within thirty (30) days of the date the supplier received the claim. A warranty claim not rejected within thirty (30) days of the date the supplier received the claim is considered to be accepted by the supplier.

(3) No later than thirty (30) days after the date a warranty claim is accepted or rejected under subsection (2) of this section, the supplier shall:

- (a) Pay an accepted warranty claim; or
- (b) Send the dealer written notice of the reason the warranty claim was rejected.

(4) A supplier shall compensate the dealer for the warranty claim as follows:

- (a) The dealer's established customer hourly retail labor rate multiplied by the reasonable and customary amount of time required to complete such work by similarly situated dealers, including diagnostic time, and cleanup time, expressed in hours and fractions of an hour;
- (b) The dealer's current net price on repair parts reimbursed at not less than net plus twenty percent (20%) of the cost for warranty service performed on behalf of the supplier to compensate for reasonable costs of doing business; and
- (c) Extraordinary freight and handling costs. For purposes of this subsection (4)(c), "extraordinary freight and handling costs" means costs that are above and beyond the normal reimbursement policy of the supplier for warranty repair work;
- (d) When the repair work is for safety or mandatory modifications ordered by the supplier, the supplier shall reimburse the dealer for transportation costs incurred by the dealer.

(5) After payment of a warranty claim, a supplier may not charge back, off-set or otherwise attempt to recover from the dealer all or part of the amount of the claim unless:

- (a) The warranty claim was submitted in error;
- (b) The services for which the warranty claim was made were not properly performed or were unnecessary to comply with the warranty; or
- (c) The dealer did not substantiate the warranty claim according to the written requirements of the supplier that were in effect when the equipment was delivered to the dealer by the customer for warranty repairs.

(6) If a supplier denies a warranty claim due to a particular item or part of the claim, the denial shall only affect the items or parts in question and not the complete warranty claim.

(7) A supplier may not pass the cost of covering warranty claims under this chapter on to a dealer through any means including:

- (a) Surcharges;



- (b) Reduction of discounts; or
- (c) Certification standards.

**History.**

I.C., § 28-24-104B, as added by 2005, ch. 238, § 9, p. 730; am. 2011, ch. 270, § 15, p. 730.

**Compiler's Notes.** The 2011 amendment, by ch. 270, deleted former subsection (8),

which read: "Notwithstanding the provisions of subsection (4) of this section, a dealer may accept the supplier's reimbursement terms and conditions in lieu of the terms and conditions set forth in subsection (4) of this section."

**28-24-105. Remedies and enforcement.** — Monetary damages may be recovered for losses sustained as a consequence of any violation of the provisions of this chapter. Such recovery may also include a requirement that the supplier repurchase at fair market value any data processing hardware, software and specialized repair tools and equipment previously purchased from the supplier or approved vendor of the supplier pursuant to requirements of the supplier. Additionally, any judgment rendered by a court of competent jurisdiction for the plaintiff in a suit filed pursuant to this section may include damages in the amount of two (2) times the compensatory damages found due and owing. Injunctive relief may also be granted against any actual or threatened violation of the provisions of this chapter. In any action brought under this chapter the prevailing party shall be entitled to recover reasonable attorney's fees and costs. The remedies set forth in this section shall not be deemed exclusive and shall be in addition to any other remedies permitted by law. A person, firm or corporation which brings an action under this section must commence the action in the county in which the principal place of business of the retailer is located.

**History.**

I.C., § 28-24-105, as added by 1990, ch. 267, § 1, p. 750; am. 2005, ch. 238, § 10, p. 730; am. 2011, ch. 270, § 16, p. 730.

**Compiler's Notes.** The 2011 amendment, by ch. 270, added the third sentence.

**28-24-108. Jurisdiction — Venue.** — (1) The courts of this state shall have jurisdiction over any legal dispute between a wholesaler, manufacturer or distributor of farm implements or equipment, machinery, repair parts, stock parts and attachments located in or outside this state and an equipment dealer located in this state. The laws of the state of Idaho shall exclusively apply to such disputes.

(2) Venue for a dispute as provided in subsection (1) of this section shall be in the judicial district wherein the dealer's principal place of business is located.

**History.**

I.C., § 28-24-108, as added by 2011, ch. 270, § 17, p. 730.

## CHAPTER 41

## GENERAL PROVISIONS AND DEFINITIONS

## PART 2. SCOPE AND JURISDICTION

## PART 3. DEFINITIONS

## SECTION.

28-41-201. Territorial application.

## SECTION.

28-41-301. General definitions.

## PART 2. SCOPE AND JURISDICTION

**28-41-201. Territorial application.** — (1) Except as otherwise provided in this section, this act applies to sales and loans made in this state and to modifications, including refinancings, consolidations, and deferrals, made in this state, of sales and loans, wherever made. For purposes of this act a sale, loan, or modification of a sale or loan is made in this state if:

(a) A written agreement evidencing the obligation or offer of the consumer is received by the creditor in this state; or

(b) A consumer who is a resident of this state enters into the transaction with a creditor who has solicited or advertised in this state by any means including, but not limited to, mail, brochure, telephone, print, radio, television, internet or any other electronic means.

(2) Notwithstanding subsection (1)(b) of this section, unless made subject to this act by agreement of the parties, a sale, loan, or modification of a sale or loan is not made in this state if a resident of this state enters into the transaction while physically present in another state.

(3) The part on limitations on creditors' remedies, part 1 of the chapter on remedies and penalties, chapter 45, title 28, Idaho Code, applies to actions or other proceedings brought in this state to enforce rights arising from regulated credit sales or regulated loans, or extortionate extensions of credit, wherever made.

(4) If a regulated credit sale or regulated loan, or modification thereof, is made in another state to a person who is a resident of this state when the sale, loan, or modification is made, the following provisions apply as though the transaction occurred in this state:

(a) A seller, lender, or assignee of his rights, may not collect charges through actions or other proceedings in excess of those permitted by the chapter on finance charges and related provisions; and

(b) A seller, lender, or assignee of his rights, may not enforce rights against the buyer or debtor, with respect to the provisions of agreements which violate the provisions on limitations on agreements and practices, part 3 of chapter 43, title 28, Idaho Code.

(5) Except as provided in subsection (3) of this section, a sale, loan, or modification thereof, made in another state to a person who was not a resident of this state when the sale, loan or modification was made is valid and enforceable according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

(6) For the purposes of this act, the residence of a buyer or debtor is the address given by him as his residence in any writing signed by him in connection with a credit transaction. Until he notifies the creditor of a new or different address, the given address is presumed to be unchanged.



(7) Notwithstanding other provisions of this section:

(a) Except as provided in subsection (3) of this section, this act does not apply if the buyer or debtor is not a resident of this state at the time of a credit transaction and the parties then agree that the law of his residence applies; and

(b) This act applies if the buyer or debtor is a resident of this state at the time of a credit transaction and the parties then agree that the law of this state applies.

(8) Except as provided in subsection (7) of this section, the following agreements by a buyer or debtor are invalid with respect to regulated credit sales, regulated loans, or modifications thereof, to which this act applies:

(a) That the law of another state shall apply;

(b) That the buyer or debtor consents to the jurisdiction of another state; and

(c) That fixes venue.

#### History.

I.C., § 28-41-201, as added by 1983, ch. 119, § 3, p. 264; am. 2002, ch. 301, § 1, p. 858; am. 2006, ch. 122, § 1, p. 340.

**Compiler's Notes.** The 2006 amendment, by ch. 122, deleted former subsection (9), which read: "(9) The following provisions of this act specify the applicable law governing certain cases:

"(a) Applicability, section 28-46-102, Idaho Code, of the part on powers and functions of

administrator, part 1, of the chapter on administration, chapter 46, title 28, Idaho Code; and

"(b) Applicability, section 28-46-201, Idaho Code, of the part on notification and fees, part 2, of the chapter on administration, chapter 46, title 28, Idaho Code."

Section 16 of S.L. 2006, ch. 122 declared an emergency retroactively to January 1, 2006 and approved March 22, 2006.

### PART 3. DEFINITIONS

**28-41-301. General definitions.** — (1) "Actuarial method" means the method, defined by rules adopted by the administrator, of allocating payments made on a debt between principal or amount financed and loan finance charge or credit service charge pursuant to which a payment is applied first to the accumulated loan finance charge or credit service charge and the balance is applied to the unpaid principal or unpaid amount financed.

(2) "Administrator" means the administrator designated in section 28-46-103, Idaho Code.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.

(4) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(5) "Amount financed" means the total of the following items:

(a) In the case of a sale, the cash price of the goods, services, or interest in land, less the amount of any down payment made in cash or in property traded in, and the amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in, a lien on, or a debt with respect to property traded in;

(b) In case of a loan, the net amount paid to, receivable by, or paid or payable for the account of the debtor, plus the amount of any discount excluded from the finance charge, paragraph (b)(iii) of subsection (18); and

(c) In the case of a loan, to the extent that payment is, or payments are, deferred and the amount is not otherwise included and is authorized and disclosed to the debtor as required by law, amounts actually paid or to be paid by the creditor for registration, certificate of title, or license fees.

(6) "Billing cycle" means the time interval between periodic billing statement dates.

(7) "Business purpose" means any purpose except a consumer purpose. For purposes of this act, a credit transaction:

(a) Engaged in by a debtor for an agricultural purpose; or

(b) Engaged in by a debtor for an investment purpose; or

(c) Creating a debt secured by a first mortgage or first deed of trust on real property; or

(d) In which the debtor is an organization, rather than a natural person; is considered to be for a business purpose.

(8) "Card issuer" means a person who issues a credit card.

(9) "Cardholder" means a person to whom a credit card is issued or who has agreed with the card issuer to pay obligations arising from the issuance to or use of the card by another person.

(10) "Cash price" means the price of goods, services, or an interest in land at which the goods, services, or interest in land are offered for sale by the seller to cash buyers in the ordinary course of business, except as the administrator may otherwise prescribe by rule, and may include:

(a) Applicable sales, use, and excise and documentary stamp taxes;

(b) The cash price of accessories or related services such as delivery, installation, servicing, repairs, alterations, and improvements; and

(c) Amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees.

The cash price stated by the seller to the buyer pursuant to the provisions on disclosure, part 2 of chapter 43, title 28, Idaho Code, is presumed to be the cash price.

(11) "Conspicuous" means a term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the court.

(12) "Consumer purpose" means primarily a personal, family or household purpose. For purposes of this act, consumer purpose does not include a credit transaction:

(a) Engaged in by a debtor for an agricultural purpose; or

(b) Engaged in by a debtor for an investment purpose; or

(c) Creating a debt secured by a first mortgage or first deed of trust on real property; or

(d) In which the debtor is an organization, rather than a natural person.

(13) “Credit” means the right granted by a creditor to a debtor to defer payment of debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor.

(14) “Credit card” means a card or device issued under an arrangement pursuant to which a card issuer gives to a cardholder the privilege of obtaining credit from the card issuer or other person in purchasing or leasing property or services, obtaining loans, or otherwise. A transaction is “pursuant to a credit card” only if credit is obtained according to the terms of the arrangement by transmitting information contained on the card or device orally, in writing, by mechanical or electronic methods, or in any other manner. A transaction is not “pursuant to a credit card” if the card or device is used solely in that transaction to:

(a) Identify the cardholder or evidence his credit-worthiness and credit is not obtained according to the terms of the arrangement;

(b) Obtain a guarantee of payment from the cardholder’s deposit account, whether or not the payment results in a credit extension to the cardholder by the card issuer; or

(c) Effect an immediate transfer of funds from the cardholder’s deposit account by electronic or other means, whether or not the transfer results in a credit extension to the cardholder by the card issuer.

(15) “Creditor” means the person who grants credit in a regulated credit transaction or, except as otherwise provided, an assignee of a creditor’s right to payment, but use of the term does not itself impose on an assignee any obligation of his assignor. In case of credit granted pursuant to a credit card, “creditor” means the card issuer and not another person honoring the credit card.

(16) “Debtor” means the person to whom credit is granted in a regulated credit transaction.

(17) “Earnings” means compensation paid or payable by an employer to an employee, or for his account, for personal services rendered or to be rendered by him, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension, retirement, or disability program.

(18) “Finance charge”:

(a) Except as provided in paragraph (b) of this subsection, “finance charge” means the sum of any of the following types of charges payable directly or indirectly by the debtor and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, as applicable:

(i) Interest or any amount payable under a point, discount, or other system of charges, however denominated;

(ii) Time-price differential, credit service, service, carrying, or other charge, however denominated;

(iii) Premium or other charge for any guarantee or insurance protecting the creditor against the debtor’s default or other credit loss; and



(iv) Charges incurred for investigating the collateral or credit-worthiness of the debtor or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the creditor had no notice of the charges when the credit was granted.

(b) The term does not include:

(i) Charges as a result of default or delinquency if made for actual unanticipated late payment, delinquency, default, or other like occurrence, unless the parties agree that these charges are finance charges; a charge is not made for actual unanticipated late payment, delinquency, default or other like occurrence if imposed on an account that is or may be debited from time to time for purchases or other debts and, under its terms, payment in full or of a specified amount is required when billed, and in the ordinary course of business the debtor is permitted to continue to have purchases or other debts debited to the account after imposition of the charge;

(ii) Deferral charges, section 28-42-302, Idaho Code; or

(iii) A discount, if a creditor purchases or satisfies obligations of a cardholder pursuant to a credit card and the purchase or satisfaction is made at less than the face amount of the obligation.

(19) "Goods" includes goods not in existence at the time the transaction is entered into and merchandise certificates, but excludes money, chattel paper, documents of title, and instruments.

(20) "Insurance premium loan" means a regulated consumer loan that:

(a) Is made for the sole purpose of financing the payment by or on behalf of an insured of the premium on one (1) or more policies or contracts issued by or on behalf of an insurer;

(b) Is secured by an assignment by the insured to the lender of the unearned premium on the policy or contract; and

(c) Contains an authorization to cancel the policy or contract financed.

(21) "Lender," except as otherwise provided, includes an assignee of a lender's right to payment, but use of the term does not in itself impose on an assignee any obligation of the lender.

(22) "Lender credit card" means a credit card issued by a regulated lender.

(23)(a) "Loan" means, except as provided in paragraph (b) of this subsection:

(i) The creation of debt by the lender's payment of or agreement to pay money to the debtor or to a third person for the account of the debtor;

(ii) The creation of debt pursuant to a lender credit card in any manner, including a cash advance or the card issuer's honoring a draft or similar order for the payment of money drawn or accepted by the debtor, paying or agreeing to pay the debtor's obligation, or purchasing or otherwise acquiring the debtor's obligation from the obligee or his assignees;

(iii) The creation of debt by a cash advance to a debtor pursuant to a seller credit card;

(iv) The creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately; and

(v) The forbearance of debt arising from a loan.

(b) "Loan" does not include:

(i) A card issuer's payment or agreement to pay money to a third person for the account of a debtor if the debt of the debtor arises from a sale and results from use of a seller credit card; or

(ii) The forbearance of debt arising from a sale.

(24) "Merchandise certificate" means a writing not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

(25) "Open-end credit" means an arrangement pursuant to which:

(a) A creditor may permit a debtor, from time to time, to purchase on credit from the creditor or pursuant to a credit card, or to obtain loans from the creditor or pursuant to a credit card;

(b) The amounts financed and the finance and other appropriate charges are debited to an account;

(c) The finance charge, if made, is computed on the account periodically; and

(d) Either the debtor has the privilege of paying in full or in installments or the creditor periodically imposes charges computed on the account for delaying payment and permits the debtor to continue to purchase on credit.

(26) "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(27) "Payable in installments" means that payment is required or permitted by agreement to be made in:

(a) Two (2) or more periodic payments, excluding a down payment, with respect to a debt arising from a regulated consumer credit sale pursuant to which a finance charge is made;

(b) Four (4) or more periodic payments, excluding a down payment, with respect to a debt arising from a regulated consumer credit sale pursuant to which no finance charge is made; or

(c) Two (2) or more periodic payments with respect to a debt arising from a regulated consumer loan. If any periodic payment other than the down payment under an agreement requiring or permitting two (2) or more periodic payments is more than twice the amount of any other periodic payment, excluding the down payment, the regulated consumer credit sale or regulated consumer loan is "payable in installments."

(28) "Person" includes a natural person or an individual, and an organization.

(29) "Person related to" with respect to an individual means:

(a) The spouse of the individual;

(b) A brother, brother-in-law, sister or sister-in-law of the individual;

(c) An ancestor or lineal descendant of the individual or his spouse; and

(d) Any other relative, by blood or marriage, of the individual or his spouse who shares the same home with the individual.

"Person related to" with respect to an organization means:

(a) A person directly or indirectly controlling, controlled by or under common control with the organization;

(b) An officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;

(c) The spouse of a person related to the organization; and

(d) A relative by blood or marriage of a person related to the organization who shares the same home with him.

(30) "Precomputed credit transaction" means a credit transaction in which the debt is a sum comprising the amount financed and the amount of the finance charge computed in advance. A disclosure required by the Federal Consumer Credit Protection Act does not in itself make a finance charge or transaction precomputed.

(31) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Regulated consumer credit sale" means a regulated credit sale, subsection (35) of this section, and for a consumer purpose, subsection (12) of this section.

(33) "Regulated consumer credit transaction" means a regulated credit transaction, subsection (36) of this section, and for a consumer purpose, subsection (12) of this section.

(34) "Regulated consumer loan" means a regulated loan, subsection (38) of this section, and for a consumer purpose, subsection (12) of this section.

(35) "Regulated credit sale" means a sale of goods, services, or an interest in land in which:

(a) Credit is granted either pursuant to a seller credit card or by a seller who regularly engages as a seller in credit transactions of the same kind; and

(b) The debt is payable in installments or a finance charge is made.

A "regulated credit sale" does not include a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card.

(36) "Regulated credit transaction" means a regulated credit sale or regulated loan or a refinancing or consolidation thereof.

(37) "Regulated lender" means a person authorized to make, or take assignments of, regulated consumer loans, as a regular business, under section 28-46-301, Idaho Code.

(38) "Regulated loan" means a loan made by a creditor regularly engaged in the business of making loans in which the debt is payable in installments or a finance charge is made. A "regulated loan" does not include a sale in which the seller allows the buyer to purchase pursuant to a seller credit card.

(39) "Sale of goods" includes an agreement in the form of a bailment or lease of goods if the bailee or lessee pays or agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with the terms of the agreement.

(40) "Sale of an interest in land" includes a lease in which the lessee has an option to purchase the interest and all or a substantial part of the rental



or other payments previously made by him are applied to the purchase price.

(41) “Sale of services” means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

(42) “Seller” includes, except as otherwise provided, an assignee of the seller’s right to payment, but use of the term does not in itself impose on an assignee any obligation of the seller.

(43) “Seller credit card” means either:

(a) A credit card issued primarily for the purpose of giving the cardholder the privilege of using the card to purchase property or services from the card issuer, persons related to the card issuer, or persons licensed or franchised to do business under the card issuer’s business or trade name or designation, or both from any of these persons and from other persons; or

(b) A credit card issued by a person except a regulated lender primarily for the purpose of giving the cardholder the privilege of using the credit card to purchase property or services from at least one hundred (100) persons not related to the card issuer.

(44) “Services” includes:

(a) Work, labor, and other personal services;

(b) Privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like; and

(c) Insurance provided by a person other than the insurer.

(45) “Supervised financial organization” means a person, except an insurance company or other organization primarily engaged in an insurance business:

(a) Organized, chartered, or holding an authorization certificate under the laws of this state or of the United States that authorizes the person to make loans and to receive deposits, including a savings, share, certificate or deposit account; and

(b) Subject to supervision by an official or agency of this state or of the United States.

#### **History.**

I.C., § 28-41-301, as added by 1983, ch. 119, § 3, p. 264; am. 2006, ch. 122, § 2, p. 340.

**Compiler’s Notes.** The 2006 amendment, by ch. 122, redesignated provisions formerly designated as 1., 2., 3., or 4. as (i), (ii), (iii), or (iv) in subsections (18)(a), (18)(b), (23)(a) and (23)(b); substituted “28-42-302” for “28-42-

303” in present subsection (b)(ii); inserted “or” in subsection (29)(b); and substituted “section 28-46-301, Idaho Code” for “a license issued by the administrator, section 28-46-301, et seq., Idaho Code” in subsection (37).

Section 16 of S.L. 2006, ch. 122 declared an emergency retroactively to January 1, 2006 and approved March 22, 2006.

## CHAPTER 45

### REMEDIES AND PENALTIES

#### PART 4. CRIMINAL PENALTIES

##### SECTION.

28-45-401. Willful and knowing violations.

## PART 4. CRIMINAL PENALTIES

**28-45-401. Willful and knowing violations.** — (1) A regulated lender who willfully and knowingly makes charges in excess of those permitted by the chapter on finance charges and related provisions, chapter 42, title 28, Idaho Code, applying to regulated consumer loans is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding five hundred dollars (\$500) or to imprisonment not exceeding one (1) year, or both.

(2) A person who, in violation of the provisions of this act applying to authority to make regulated consumer loans, section 28-46-301, Idaho Code, willfully and knowingly engages in the business of making regulated consumer loans, or of taking assignments of and undertaking direct collection of payments from and enforcement of rights against debtors arising from regulated consumer loans, is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding five hundred dollars (\$500), or to imprisonment not exceeding one (1) year, or both.

**History.**

I.C., § 28-45-401, as added by 1983, ch. 119, § 3, p. 264; am. 2006, ch. 122, § 3, p. 340.

**Compiler's Notes.** The 2006 amendment, by ch. 122, deleted "without a license" following "knowingly engages" in subsection (2), and deleted former subsection (3), which read: "A person who willfully and knowingly engages in the business of entering into regulated consumer credit transactions, or of taking assignments of rights against debtors arising therefrom and undertaking direct col-

lection of payments or enforcement of these rights, without complying with the provisions of this act concerning notification, section 28-46-202, Idaho Code, or payment of fees, section 28-46-203, Idaho Code, is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding five hundred dollars (\$500)."

Section 16 of S.L. 2006, ch. 122 declared an emergency retroactively to January 1, 2006 and approved March 22, 2006.

## CHAPTER 46

## ADMINISTRATION

## PART 1. POWERS AND FUNCTIONS OF ADMINISTRATOR

## SECTION.

28-46-108. Administrative enforcement orders.

28-46-113. Civil actions by administrator.

## PART 2. NOTIFICATION AND FEES

28-46-201. Applicability. [Repealed.]

28-46-202. Notification. [Repealed.]

28-46-203. Fees and taxes. [Repealed.]

## PART 3. REGULATED LENDERS — LICENSING AND RELATED PROVISIONS

28-46-301. Authority to make regulated consumer loans.

28-46-302. License to make regulated consumer loans.

28-46-303. Revocation or suspension of license.

28-46-304. Records — Annual reports.

28-46-305. Examinations and investigations.

## SECTION.

## PART 4. PAYDAY LOANS

28-46-402. License required.

28-46-403. Qualifications for payday loan license.

28-46-404. Application for payday loan license.

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## PART 5. TITLE LOAN ACT

28-46-501. Short title.

28-46-502. Definitions.

28-46-503. License required.

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28-46-506. Renewal of title loan agreements.

28-46-507. Default.

28-46-508. Prohibited actions.

28-46-509. Exemption.



## PART 1. POWERS AND FUNCTIONS OF ADMINISTRATOR

**28-46-108. Administrative enforcement orders.** — (1) After notice and hearing the administrator may order a creditor or a person acting in his behalf to cease and desist from violating this act. A respondent aggrieved by an order of the administrator may obtain judicial review of the order and the administrator may obtain an order of the court for enforcement of his order in the district court. The proceeding for review or enforcement is initiated by filing a petition in the court. Copies of the petition shall be served upon all parties of record.

(2) Within thirty (30) days after service of the petition for review upon the administrator, or within any further time the court allows, the administrator shall transmit to the court the original or a certified copy of the entire record upon which the order is based, including any transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. After hearing, the court may:

(a) Reverse or modify the order if the findings of fact of the administrator are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

(b) Grant temporary relief or restraining order it deems just; and

(c) Enter an order enforcing, modifying and enforcing as modified, or setting aside in whole or in part the order of the administrator, or remanding the case to the administrator for further proceedings.

(3) An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the administrator in the interest of justice for the purpose of adducing additional specified and material evidence and seeking findings thereon upon good cause shown for the failure to adduce this evidence before the administrator.

(4) The jurisdiction of the court shall be exclusive and its final judgment or decree is subject to review by the supreme court in the same manner and form and with the same effect as in appeals from a final judgment or decree. The administrator's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(5) A proceeding for review under this section shall be initiated within thirty (30) days after a copy of the order of the administrator is received. If no proceeding is so initiated, the administrator may obtain an order of the court for enforcement of his order upon showing that his order was issued in compliance with this section, that no proceeding for review was initiated within thirty (30) days after a copy of the order was received, and that the respondent is subject to the jurisdiction of the court.

(6) With respect to unconscionable agreements or fraudulent or unconscionable conduct by a regulated lender, the administrator may not issue an order pursuant to this section but may bring a civil action for an injunction, section 28-46-111, Idaho Code, or any other action which the administrator is authorized to bring under this act.

(7) With respect to unconscionable agreements or fraudulent or unconscionable conduct by an unlicensed person who is required to be licensed

under section 28-46-301, Idaho Code, the administrator may issue a cease and desist order without prior notice or hearing, and may bring a civil action for an injunction, or any other action which the administrator is authorized to bring under this act.

**History.**

I.C., § 28-46-108, as added by 1983, ch. 119, § 3, p. 264; am. 2002, ch. 301, § 4, p. 858; am. 2006, ch. 122, § 4, p. 340.

**Compiler's Notes.** The 2006 amendment, by ch. 122, substituted "a regulated lender" for "persons licensed to make registered con-

sumer loans" in subsection (6) and inserted "who is required to be licensed under section 28-46-301, Idaho Code" in subsection (7).

Section 16 of S.L. 2006, ch. 122 declared an emergency retroactively to January 1, 2006 and approved March 22, 2006.

**28-46-113. Civil actions by administrator.** — (1) After demand, the administrator may bring a civil action against a creditor to recover actual damages sustained and excess charges paid by one (1) or more debtors who have a right to recover explicitly granted by this act. In a civil action under this subsection, penalties may not be recovered by the administrator. The court shall order amounts recovered under this subsection to be paid to each debtor or set off against his obligation. A debtor's action, except a class action, takes precedence over a prior or subsequent action by the administrator with respect to the claim of that debtor. A debtor's class action takes precedence over a subsequent action by the administrator with respect to claims common to both actions, but the administrator may intervene. An administrator's action on behalf of a class of debtors takes precedence over a debtor's subsequent class action with respect to claims common to both actions. Whenever an action takes precedence over another action under this subsection, the latter action may be stayed to the extent appropriate while the precedent action is pending and dismissed if the precedent action is dismissed with prejudice or results in a final judgment granting or denying the claim asserted in the precedent action. A defense available to a creditor in a civil action brought by a debtor is available to him in a civil action brought under this subsection.

(2) The administrator may bring a civil action against a creditor or a person acting in his behalf to recover a civil penalty of no more than five thousand dollars (\$5,000) for repeatedly and intentionally violating this act. A civil penalty pursuant to this subsection may not be imposed for a violation of this act occurring more than two (2) years before the action is brought.

**History.**

I.C., § 28-46-113, as added by 1983, ch. 119, § 3, p. 264; am. 2002, ch. 301, § 5, p. 858; am. 2006, ch. 122, § 5, p. 340.

**Compiler's Notes.** The 2006 amendment, by ch. 122, deleted former subsection (3), which read: "The administrator may bring a civil action against a creditor for failure to file notification in accordance with the provisions on notification, section 28-46-202, Idaho Code, or to pay fees in accordance with the

provisions on fees, section 28-46-203, Idaho Code, to recover the fees the defendant has failed to pay and a civil penalty in an amount determined by the court not exceeding the greater of three (3) times the amount of fees the defendant has failed to pay or one thousand dollars (\$1,000), plus the administrator's costs and attorney's fees."

Section 16 of S.L. 2006, ch. 122 declared an emergency retroactively to January 1, 2006 and approved March 22, 2006.

PART 2. NOTIFICATION AND FEES

**28-46-201. Applicability. [Repealed.]**

**Compiler's Notes.** This section, which comprised I.C., § 28-46-201, as added by 1983, ch. 119, § 3, p. 264, was repealed by S.L. 2006, ch. 122, § 6.

Section 16 of S.L. 2006, ch. 122 declared an emergency retroactively to January 1, 2006 and approved March 22, 2006.

**28-46-202. Notification. [Repealed.]**

**Compiler's Notes.** This section, which comprised I.C., § 28-46-202, as added by 1983, ch. 119, § 3, p. 264; am. 1995, ch. 99, § 25, p. 299, was repealed by S.L. 2006, ch. 122, § 6.

Section 16 of S.L. 2006, ch. 122 declared an emergency retroactively to January 1, 2006 and approved March 22, 2006.

**28-46-203. Fees and taxes. [Repealed.]**

**Compiler's Notes.** This section, which comprised I.C., § 28-46-203, as added by 1983, ch. 119, § 3, p. 264; am. 1984, ch. 47, § 13, p. 76; am. 1995, ch. 99, § 26, p. 299, was repealed by S.L. 2006, ch. 122, § 6.

Section 16 of S.L. 2006, ch. 122 declared an emergency retroactively to January 1, 2006 and approved March 22, 2006.

PART 3. REGULATED LENDERS — LICENSING AND RELATED PROVISIONS

**28-46-301. Authority to make regulated consumer loans. —**

(1) The administrator shall receive and act on all applications for licenses to make regulated consumer loans under this act. Applications shall be filed in the manner prescribed by the administrator and shall contain such information as the administrator may reasonably require. Unless a person is exempt under federal law or under this section or has first obtained a license from the administrator authorizing him to make regulated consumer loans, he shall not engage in the business of:

- (a) Making regulated consumer loans; or
- (b) Taking assignments of and undertaking direct collection of payments from or enforcement of rights against debtors arising from regulated consumer loans.

(2) Any "supervised financial organization," as defined in section 28-41-301(45), Idaho Code, or any person organized, chartered, or holding an authorization certificate under the laws of another state to engage in making loans and receiving deposits, including a savings, share, certificate, or deposit account and who is subject to supervision by an official or agency of the other state, shall be exempt from the licensing requirements of this section.

(3) Mortgage lenders licensed under the Idaho residential mortgage practices act, chapter 31, title 26, Idaho Code, shall be exempt from the licensing requirements of this section as to mortgage lending activities defined in chapter 31, title 26, Idaho Code.



**History.**

I.C., § 28-46-301, as added by 1983, ch. 119, § 3, p. 264; am. 1995, ch. 99, § 27, p. 299; am. 2006, ch. 122, § 7, p. 340; am. 2008, ch. 312, § 1, p. 861.

**Compiler's Notes.** The 2006 amendment, by ch. 122, added the subsection (1) designation; in subsection (1), rewrote the second sentence, which formerly read: "Applications shall be filed in the manner prescribed by the

administrator, shall contain such information as the administrator may reasonably require, and shall be accompanied by the fee required by subsection (5) of section 28-46-305, Idaho Code"; and added subsection (2).

Section 16 of S.L. 2006, ch. 122 declared an emergency retroactively to January 1, 2006 and approved March 22, 2006.

The 2008 amendment, by ch. 312, added subsection (3).

**28-46-302. License to make regulated consumer loans.** — (1) The administrator shall receive and act on all applications for a license to do business as a regulated lender. Applications shall be filed in the manner prescribed by the administrator, shall contain such information as the administrator may reasonably require, shall be updated as necessary to keep the information current, and shall be accompanied by an application fee of three hundred fifty dollars (\$350). When an application for licensure is denied or withdrawn, the administrator shall retain all fees paid by the applicant. The administrator may deny an application for a license if the administrator finds that:

(a) The financial responsibility, character, and fitness of the applicant, and of the officers and directors thereof (if the applicant is a corporation) are not such as to warrant belief that the business will be operated honestly and fairly within the purposes of this act;

(b) The applicant does not maintain at least thirty thousand dollars (\$30,000) in liquid assets, as determined in accordance with generally accepted accounting principles, available for the purpose of making loans under this chapter;

(c) The applicant has had a license, substantially equivalent to a license under this chapter and issued by any state, denied, revoked or suspended under the law of such state;

(d) The applicant has filed an application for a license which is false or misleading with respect to any material fact;

(e) The application does not contain all of the information required by the administrator; or

(f) The application is not accompanied by an application fee of three hundred fifty dollars (\$350).

(2) A licensee under this chapter shall meet the requirements of subsection (1) of this section at all times while licensed pursuant to this chapter. The administrator is empowered to conduct investigations as he may deem necessary, to enable him to determine the existence of the requirements set out in subsection (1) of this section.

(3) Upon written request, the applicant is entitled to a hearing on the question of his qualifications for a license if:

(a) The administrator has notified the applicant in writing that his application has been denied, or objections filed; or

(b) The administrator has not issued a license within sixty (60) days after the application for the license was filed.

If a hearing is held, the applicant and those filing objections shall reimburse, pro rata, the administrator for his reasonable and necessary

expenses incurred as a result of the hearing. A request for a hearing may not be made more than fifteen (15) days after the administrator has mailed a writing to the applicant notifying him that the application has been denied and stating in substance the administrator's finding supporting denial of the application or that objections have been filed and the substance thereof.

(4) The administrator may issue additional licenses to the same licensee upon application by the licensee, in the manner prescribed by the administrator, and payment of the required application fee. A separate license shall be required for each place of business. Each license shall remain in full force and effect unless the licensee does not satisfy the renewal requirements of subsection (7) of this section, or the license is relinquished, suspended or revoked.

(5) No licensee shall change the location of any place of business, or consolidate, or close any locations, without giving the administrator at least fifteen (15) days' prior written notice.

(6) A licensee shall not engage in the business of making regulated consumer loans at any place of business for which he does not hold a license nor shall he engage in business under any other name than that in the license.

(7) On or before May 31 of each year, every licensee under this chapter shall pay a nonrefundable annual license renewal fee of one hundred fifty dollars (\$150) per licensed location, and shall file with the administrator a renewal form containing such information as the administrator may require.

#### **History.**

I.C., § 28-46-302, as added by 1983, ch. 119, § 3, p. 264; am. 1984, ch. 47, § 14, p. 76; am. 1998, ch. 74, § 1, p. 271, p. 271; am. 1999, ch. 275, § 1, p. 688; am. 2006, ch. 122, § 8, p. 340; am. 2008, ch. 312, § 2, p. 862.

**Compiler's Notes.** The 2006 amendment, by ch. 122, rewrote the introductory paragraph of subsection (1), which formerly read: "No application for license shall be denied if the administrator finds that"; inserted "not" in subsection (1)(a); rewrote subsection (1)(b), which formerly read: "The applicant has at least thirty thousand dollars (\$30,000) available for the purpose of making loans"; added subsections (1)(c) to (f); in subsection (2), added the first sentence and substituted "subsection (1)" for "subsections (1)(a) and (1)(b)" near the end; in subsection (3), substituted "subsection (1)(a) or (b)" for "subsection (1) or (2)" and deleted "and subsection (5) of section 28-46-305, Idaho Code" preceding "shall apply to persons"; in subsection (5), substituted "application" for "notification" and inserted "application" in the first sentence preceding "fee"

and substituted "unless the licensee does not satisfy the renewal requirements of subsection (8) of this section, or the license is relinquished" for "until surrendered" in the last sentence; and added subsection (8).

Section 16 of S.L. 2006, ch. 122 declared an emergency retroactively to January 1, 2006 and approved March 22, 2006.

The 2008 amendment, by ch. 312, deleted former subsection (3), which read: "The director may issue a license under this act to a mortgage lender licensed under chapter 31, title 26, Idaho Code, and who is engaged in the business described in subsection (1)(a) or (b) of section 28-46-301, Idaho Code. All provisions of this act, except subsections (1) and (2) of this section, shall apply to persons seeking a license pursuant to this subsection" and redesignated the subsequent subsections accordingly; and deleted the last sentence in subsection (5), which read: "No licensee shall change the location of any of his places of business to a location more than five (5) miles from the original location or outside the original municipality, if any."

**28-46-303. Revocation or suspension of license.** — (1) The administrator may issue to a person licensed to make regulated consumer loans an order to show cause why his license should not be revoked or suspended for

a period not in excess of six (6) months. The order shall state the place for a hearing and set a time for the hearing that is no less than ten (10) days from the date of the order. After the hearing, the administrator shall revoke or suspend the license if he finds that:

(a) The licensee has repeatedly and willfully violated this act or any rule or order lawfully made pursuant to this act; or

(b) Facts or conditions exist which would clearly have justified the administrator in refusing to grant a license had these facts or conditions existed or been known to exist at the time the application for the license was made.

(2) No revocation or suspension of a license is lawful unless prior to institution of revocation or suspension proceedings by the administrator, notice is given to the licensee of the facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

(3) If the administrator finds that probable cause for revocation of a license exists and that enforcement of this act requires immediate suspension of the license pending investigation, he may, after a hearing upon five (5) days' written notice, enter an order suspending the license for not more than thirty (30) days.

(4) Whenever the administrator revokes or suspends a license, he shall enter an order to that effect and forthwith notify the licensee of the revocation or suspension. Within five (5) days after the entry of the order, he shall deliver to the licensee a copy of the order and the findings supporting the order.

(5) Any person holding a license to make regulated consumer loans may relinquish the license by notifying the administrator in writing of its relinquishment, but this relinquishment shall not affect his liability for acts previously committed.

(6) No revocation, suspension, or relinquishment of a license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any debtor.

(7) The administrator may reinstate a license, terminate a suspension, or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would have justified the administrator in refusing to grant a license.

#### **History.**

I.C., § 28-46-303, as added by 1983, ch. 119, § 3, p. 264; am. 2006, ch. 122, § 9, p. 340.

**Compiler's Notes.** The 2006 amendment, by ch. 122, inserted "existed or" in subsection (1)(b).

Section 16 of S.L. 2006, ch. 122 declared an emergency retroactively to January 1, 2006 and approved March 22, 2006.

**28-46-304. Records — Annual reports.** — (1) Every regulated lender shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the administrator to determine whether the regulated lender is complying with the provisions of this act. The recordkeeping system of a regulated lender shall be sufficient if he makes the required information reasonably available. The records need



not be kept in the place of business where regulated consumer loans are made, if the administrator is given free access to the records wherever located. The records pertaining to any loan need not be preserved for more than two (2) years after making the final entry relating to the loan, but in the case of an open-end account, the two (2) years is measured from the date of each entry.

(2) Concurrent with license renewal, on or before May 31 of each year, every licensee shall file with the administrator a composite annual report for the prior calendar year in the form prescribed by the administrator relating to all regulated consumer loans made by him. Information contained in annual reports shall be subject to disclosure according to chapter 3, title 9, Idaho Code, and may be published only in composite form.

**History.**

I.C., § 28-46-304, as added by 1983, ch. 119, § 3, p. 264; am. 1990, ch. 213, § 25, p. 480; am. 2006, ch. 122, § 10, p. 340.

**Compiler's Notes.** The 2006 amendment, by ch. 122, substituted "regulated lender" for

"licensee" three times in subsection (1) and added "Concurrent with license renewal" at the beginning of subsection (2).

Section 16 of S.L. 2006, ch. 122 declared an emergency retroactively to January 1, 2006 and approved March 22, 2006.

**28-46-305. Examinations and investigations.** — (1) The administrator may examine periodically at intervals he deems appropriate, the loans and business records of every regulated lender. In addition, for the purpose of discovering violations of this act or securing information lawfully required, the administrator may at any time investigate the loans, business, and records of any regulated lender. For these purposes, he shall have free and reasonable access to the offices, places of business, and records of the lender. The administrator, for purposes of examination of licensees herein, shall be paid the cost of examination by the licensee, within thirty (30) days of demand for payment. The administrator shall, on July 1 of each year, fix such per diem examination cost.

(2) If the regulated lender's records are located outside this state, the regulated lender, at his option, shall make them available to the administrator at a convenient location within this state, or pay the reasonable and necessary expenses for the administrator or his representative to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

(3) For the purposes of this section, the administrator may administer oaths or affirmations, and upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(4) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the administrator may apply to the district court for an order compelling compliance.

**History.**

I.C., § 28-46-305, as added by 1983, ch. 119, § 3, p. 264; am. 2006, ch. 122, § 11, p. 340.

**Compiler's Notes.** The 2006 amendment, by ch. 122, substituted "may examine" for "shall examine" in subsection (1); inserted "regulated" twice in subsection (2); and de-

leted former subsection (5), which read: "For purposes of investigation herein, each regulated lender applicant shall submit with his application the sum of one hundred dollars (\$100)."

Section 16 of S.L. 2006, ch. 122 declared an emergency retroactively to January 1, 2006 and approved March 22, 2006.

**PART 4. PAYDAY LOANS****28-46-401. Definitions.**

**Collateral References.** State regulation of payday loans. 29 A.L.R.6th 461.

**28-46-402. License required.** — (1) No person shall engage in the business of payday loans, offer or make a payday loan, or arrange a payday loan for a third party lender in a payday loan transaction without having first obtained a license under this chapter. A separate license shall be required for each location from which such business is conducted.

(2) Any "supervised financial organization," as defined in section 28-41-301(45), Idaho Code, or any person organized, chartered, or holding an authorization certificate under the laws of another state to engage in making loans and receiving deposits, including a savings, share, certificate, or deposit account and who is subject to supervision by an official or agency of the other state, shall be exempt from the licensing requirements of this section.

(3) A payday loan made in this state in violation of the licensing requirement of this section is void, uncollectible and unenforceable. For any such payday loan the debtor is not obligated to pay the principal or any fee associated with such payday loan. If a debtor has paid any part of the principal or fee, the debtor has a right to recover the payment from the person violating the provisions of this section or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. In the event the administrator initiates an administrative or civil action against a person who has violated the provisions of this section, the administrator shall be entitled to recover the principal and fees received by such person in a payday loan transaction made in violation of the provisions of this section.

(4) If the administrator finds that a person subject to this part has violated, is violating, or that there is reasonable cause to believe that a person is about to violate the provisions of this part, or any rule promulgated under this act and pertinent to this part, the administrator may, in his discretion, order the person to cease and desist from the violations.

**History.**

I.C., § 28-46-402, as added by 2003, ch. 182, § 1, p. 490; am. 2006, ch. 122, § 12, p. 340; am. 2009, ch. 175, § 1, p. 555.

**Compiler's Notes.** The 2006 amendment,

by ch. 122, added the subsection (1) designation and added subsection (2).

Section 16 of S.L. 2006, ch. 122 declared an emergency retroactively to January 1, 2006 and approved March 22, 2006.



The 2009 amendment, by ch. 175, added subsections (3) and (4).

**28-46-403. Qualifications for payday loan license.** — (1) To qualify for a license, an applicant shall satisfy the following requirements:

(a) The applicant shall have liquid assets of at least thirty thousand dollars (\$30,000) determined in accordance with generally accepted accounting principles, provided that applicants seeking to engage in the business of payday loans at more than one (1) location in the state shall have liquid assets of at least an additional five thousand dollars (\$5,000) for each additional location in the state up to a maximum of seventy-five thousand dollars (\$75,000) for all locations in the state; and

(b) The financial responsibility, financial condition, business experience, character and general fitness of the applicant shall reasonably warrant the administrator's belief that the applicant's business will be conducted lawfully and fairly. In determining whether this qualification has been met, and for the purpose of investigating compliance with this act, the administrator may review:

(i) The relevant business records and the capital adequacy of the applicant;

(ii) The competence, experience, integrity and financial ability of any applicant, and if the applicant is an entity, of any person who is a member, partner, director, senior officer or twenty-five percent (25%) or more equity owner of the applicant; and

(iii) Any record of conviction, on the part of the applicant, or any person referred to in subparagraph (ii) of this paragraph, of any criminal activity; any fraud or other act of personal dishonesty; any act, omission or practice which constitutes a breach of a fiduciary duty; or any suspension, revocation, removal or administrative action by any agency or department of the United States or any state, from participation in the conduct of any business.

(2) The requirements set forth in subsection (1) of this section are continuing in nature. A licensee shall meet the requirements of this section at all times while licensed pursuant to this part 4.

**History.**

I.C., § 28-46-403, as added by 2003, ch. 182, § 1, p. 490; am. 2006, ch. 122, § 13, p. 340.

**Compiler's Notes.** The 2006 amendment, by ch. 122, deleted "and approve" from the end of the introductory paragraph of subsection (1)(a); and rewrote subsection (2), which for-

merly read: "The requirements set forth in subsection (1) of this section are continuing in nature and may be reviewed periodically by the administrator."

Section 16 of S.L. 2006, ch. 122 declared an emergency retroactively to January 1, 2006 and approved March 22, 2006.

**28-46-404. Application for payday loan license.** — (1) Each application for a license shall be in writing and under oath to the administrator, in a form prescribed by the administrator, and shall include at least the following:

(a) The legal name, residence and business address of the applicant and, if the applicant is an entity, of every member, partner, director, senior officer or twenty-five percent (25%) or more equity owner of the applicant;

(b) The location at which the principal place of business of the applicant is located; and

(c) Other data and information the administrator may require with respect to the applicant, and if the applicant is an entity, such data and information of its members, partners, directors, senior officers, or twenty-five percent (25%) or more equity owners of the applicant.

(2) Each application for a license shall be accompanied by an application fee in the amount of three hundred fifty dollars (\$350). Such fee shall not be subject to refund.

(3) The fee set forth in subsection (2) of this section shall be required for each location for which an application is submitted.

(4) Within sixty (60) days of the filing of an application in a form prescribed by the administrator, accompanied by the fee required in subsection (2) of this section, the administrator shall investigate to ascertain whether the qualifications prescribed by subsection (1) of section 28-46-403, Idaho Code, have been satisfied. If the administrator finds that the qualifications have been satisfied and approves the documents, the administrator shall issue to the applicant a license to engage in the payday loan business.

(5) A license issued pursuant to this section shall remain in full force and effect unless the licensee does not satisfy the renewal requirements of subsection (6) of this section, or the license is relinquished, suspended or revoked pursuant to this act.

(6) On or before May 31 of each year, every licensee under this part 4 shall pay a nonrefundable annual license renewal fee of one hundred fifty dollars (\$150) per licensed location, and shall file with the administrator a renewal form containing such information as the administrator may require.

#### **History.**

I.C., § 28-46-404, as added by 2003, ch. 182, § 1, p. 490; am. 2006, ch. 122, § 14, p. 340.

**Compiler's Notes.** The 2006 amendment, by ch. 122, substituted "fee in the amount of three hundred fifty dollars (\$350)" for "and investigation fee in an amount prescribed by the administrator" in the first sentence of subsection (2); rewrote subsection (5), which

formerly read: "A license issued pursuant to this section shall remain in force and effect through the remainder of the calendar year after its date of issuance unless earlier surrendered, suspended or revoked pursuant to this act"; and added subsection (6).

Section 16 of S.L. 2006, ch. 122 declared an emergency retroactively to January 1, 2006 and approved March 22, 2006.

**28-46-407. Suspension or revocation of license.** — (1) The administrator may, after notice and hearing, suspend or revoke any license if the administrator finds that the licensee:

(a) Has knowingly or through the lack of due care failed to pay any fee imposed by the administrator under the authority of this act;

(b) Has committed any fraud, engaged in any dishonest activities or made any misrepresentations;

(c) Has violated any provision of this act or any rule or order lawfully made pursuant to this act or has violated any other law in the course of the licensee's dealing as a licensee;

(d) Has made a materially false statement in the application for the license or failed to give a true reply to a question in the application; or  
(e) Has demonstrated incompetence or untrustworthiness to act as a licensee.

(2) If the reason for revocation or suspension of a licensee's license at any one (1) location is of general application to all locations operated by a licensee, the administrator may revoke or suspend all licenses issued to a licensee.

**History.**

I.C., § 28-46-407, as added by 2003, ch. 182, § 1, p. 490; am. 2006, ch. 122, § 15, p. 340.

**Compiler's Notes.** The 2006 amendment, by ch. 122, substituted "any fee" for "the

annual fee imposed by this act, or any examination fee" in subsection (1)(a).

Section 16 of S.L. 2006, ch. 122 declared an emergency retroactively to January 1, 2006 and approved March 22, 2006.

**PART 5. TITLE LOAN ACT**

**28-46-501. Short title.** — This part shall be known and may be cited as the "Title Loan Act."

**History.**

I.C., § 28-46-501, as added by 2006, ch. 323, § 1, p. 1023.

**28-46-502. Definitions.** — As used in this part, unless the context otherwise requires:

(1) "Title lender" means a regulated lender authorized pursuant to this part to make title loans.

(2) "Title loan" means a loan for a consumer purpose that is secured by a nonpurchase money security interest in titled personal property and that is scheduled to be repaid in either a single installment or in multiple installments that are not fully amortized. Title loans are regulated consumer loans and, except as otherwise provided in this part, all provisions of the Idaho credit code relating to regulated consumer loans apply to title loans and to persons engaged in the business of making title loans.

(3) "Title loan agreement" means a written agreement whereby a title lender agrees to make a title loan to a debtor, and the debtor agrees to give the title lender a security interest in unencumbered titled personal property owned by the debtor. Except as otherwise provided in this part, all provisions of chapter 9, title 28, Idaho Code, apply to title loans and to persons engaged in the business of making title loans.

(4) "Titled personal property" means any motor vehicle, the ownership of which is evidenced and delineated by a state issued certificate of title, but does not include a motor home, mobile home or manufactured home.

**History.**

I.C., § 28-46-502, as added by 2006, ch. 323, § 1, p. 1023.

**28-46-503. License required.** — (1) No person shall engage in the



business of making title loans without having first obtained a license from the administrator pursuant to this chapter authorizing the person to make regulated consumer loans.

(2) Any title loan made without first having obtained a license is void, in which case the person making the loan forfeits the right to collect any moneys, including principal, interest, and any other fee paid by the debtor in connection with the title loan agreement. The person making the title loan shall release its security interest in the titled personal property used as security for the title loan and shall return to the debtor:

- (a) The certificate of title for such titled personal property;
- (b) Such titled personal property if the person making the loan took possession of such property;
- (c) The fair market value of such titled personal property if the person making the loan took possession of such property and is not able to return such property; and
- (d) All principal, interest, and any other fees paid by the debtor.

**History.**

I.C., § 28-46-503, as added by 2006, ch. 323, § 1, p. 1023.

**28-46-504. Title loan agreements.** — (1) Every title lender shall keep a numbered record of each and every title loan agreement executed by the title lender and debtor. Such record, as well as the title loan agreement, shall include the following information:

- (a) The make, model and year of the titled personal property;
- (b) The vehicle identification number, or other comparable identification number, along with the license plate number, if applicable, of the titled personal property;
- (c) The name, residential address and date of birth of the debtor;
- (d) The date the title loan agreement is executed by the title lender and the debtor; and
- (e) The maturity date of the title loan agreement.

(2) The following information shall also be printed on the title loan agreement:

- (a) The name and physical address of the title loan office;
- (b) In not less than twelve (12) point bold type, the name and address of the administrator as well as a telephone number to which consumers may address complaints;
- (c) The following statement in not less than twelve (12) point bold type and in all capitalized letters:

“(1) This loan is not intended to meet long-term financial needs.

(2) You should use this loan only to meet short-term cash needs.

(3) You will be required to pay additional interest and fees if you renew this loan rather than pay the debt in full when due.

(4) This loan may be a higher interest loan. You should consider what other lower cost loans may be available to you.

(5) You are placing at risk your continued ownership of the titled personal property you are using as security for this loan.



(6) If you default under this loan the title lender may take possession of the titled personal property used as security for this loan and sell the property in the manner provided by law.

(7) If you enter into a title loan agreement, you have a legal right of rescission. This means you may cancel your contract at no cost to you by returning the money you borrowed by the next business day after the date of your loan.

(8) If you believe that the title lender has violated the provisions of the Idaho Title Loan Act, you have the right to file a written complaint with the Idaho Department of Finance and the Department will investigate your complaint."

(d) The statement that "The debtor represents and warrants, to the best of the debtor's knowledge, that the titled personal property is not stolen and has no liens or encumbrances against it, the debtor has the right to enter into this transaction and will not apply for a duplicate certificate of title while the title loan agreement is in effect."

(3) The debtor shall sign the title loan agreement and shall be provided with a copy of such agreement. The title loan agreement shall also be signed by the title lender or the title lender's employee or agent. If the debtor has been issued a social security number, the title lender shall keep on file the social security number of the debtor.

**History.**

I.C., § 28-46-504, as added by 2006, ch. 323, § 1, p. 1023.

**28-46-505. Disclosure.** — (1) Notwithstanding the provisions of section 28-46-103, Idaho Code, or any other law to the contrary, in accordance with the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, the administrator may promulgate rules requiring each title lender to issue a standardized consumer notification and disclosure form in compliance with federal truth-in-lending laws prior to entering into any title loan agreement. The required style, content and method of executing the form may be prescribed by the rule and shall be designed to ensure that the debtor, prior to entering into such agreement, receives and acknowledges an accurate and complete notification and disclosure of the itemized and total amounts of all interest, fees, charges and other costs that will or potentially could be imposed as a result of such agreement.

(2) A title lender shall conspicuously post in each licensed location the statements listed in section 28-46-504(2)(c), Idaho Code.

**History.**

I.C., § 28-46-505, as added by 2006, ch. 323, § 1, p. 1023.

**28-46-506. Renewal of title loan agreements.** — (1) Title loan agreements shall not exceed thirty (30) days in length. However, such agreements may provide for renewals, which may occur automatically, unless one (1) of the following has occurred:

- (a) The debtor has paid all principal and finance charges due in accordance with the title loan agreement;
- (b) The debtor has surrendered possession, title and all other interest in and to the titled personal property to the title lender; or
- (c) The title lender has notified the debtor in writing that the title loan agreement is not to be renewed.

(2) A debtor has the right to cancel the debtor's obligation to make payments under a title loan agreement until the close of the next business day after the day when the debtor signs a title loan agreement if the debtor returns the original check or cash to the location where the loan was originated. For the purpose of this section, "business day" means any day that the title loan office is open for business.

(3) Notwithstanding any provision of this part 5 to the contrary, beginning with the third renewal or continuation and at each successive renewal or continuation thereafter, the debtor shall be required to make a payment of at least ten percent (10%) of the principal amount of the original title loan in addition to any finance charges that are due. Finance charges due at each successive renewal or continuation shall be calculated on the outstanding principal balance. Principal payments in excess of the ten percent (10%) required principal reduction shall be credited to the outstanding principal on the day received. If at the maturity of any renewal requiring a principal reduction, the debtor has not made previous principal reductions adequate to satisfy the current required principal reduction, and the debtor cannot repay at least ten percent (10%) of the original principal balance and any outstanding finance charges, the title lender may, but shall not be obligated to, defer any required principal payment until a future date. No further finance charges may accrue on any such principal amount thus deferred.

(4) Within fourteen (14) days after a title loan is automatically renewed, the title lender shall provide the debtor written notice of the renewal either by personal delivery to the debtor or by deposit in the regular mail to the debtor's residential address listed in the title loan agreement. For the purpose of this section, a renewal is any extension of a title loan for an additional period without any change in the terms of the title loan other than extension of the maturity date and a reduction in principal.

**History.**

I.C., § 28-46-506, as added by 2006, ch. 323, § 1, p. 1023.

**28-46-507. Default.** — (1) Before exercising any of its rights upon a default by a debtor under a title loan agreement, the title lender shall mail a "Notice to Cure Default" to the debtor at the debtor's last address shown in the title lender's file, notifying the debtor that the debtor has ten (10) days from the date of the notice in which to cure the default.

(2) If the debtor does not cure the default within the ten (10) days, the title lender may proceed to exercise its rights under chapter 9, title 28, Idaho Code. There shall be no further finance charges assessed to the debtor after the title lender has obtained possession of the titled personal property.

(3) Upon voluntary surrender of the titled personal property used as

security for a title loan, the title lender shall have no obligation to send any "Notice to Cure Default" to the debtor.

(4) Title lenders may assess and collect reasonable expenses of collection and enforcement as authorized by chapter 9, title 28, Idaho Code.

**History.**

I.C., § 28-46-507, as added by 2006, ch. 323, § 1, p. 1023.

**28-46-508. Prohibited actions.** — A title lender shall not:

(1) Enter into a title loan agreement with a person less than eighteen (18) years of age, or with anyone who appears to be intoxicated;

(2) Make any agreement giving the title lender any recourse against the debtor other than the title lender's right to take possession of the titled personal property and certificate of title upon the debtor's default, and to sell or otherwise dispose of the titled personal property in accordance with the provisions of chapter 9, title 28, Idaho Code, except where the debtor prevented repossession of the vehicle, damaged or committed or permitted waste on the vehicle or committed fraud;

(3) Enter into a title loan agreement in which the amount of money loaned, when combined with the outstanding balance of other outstanding title loan agreements the debtor has with the same lender secured by any single titled personal property, exceeds the retail value of the titled personal property as determined by common motor vehicle appraisal guides;

(4) Accept any waiver, in writing or otherwise, of any right or protection accorded a debtor under this chapter;

(5) Fail to exercise reasonable care to protect from loss or damage the certificate of title in the physical possession of the title lender;

(6) Purchase titled personal property used as security for a title loan made by the title lender;

(7) Enter into a title loan agreement unless the debtor presents a clear title to titled personal property at the time that the loan is made. If the title lender files a lien against such titled personal property without possession of a clear title to such property, the resulting lien shall be void;

(8) Capitalize or add any accrued interest or fee to the original principal of the title loan agreement during any renewal of the agreement;

(9) Require a debtor to provide any additional guaranty as a condition to entering into a title loan agreement;

(10) Use any device or agreement, including agreements with affiliated title lenders, with the intent to obtain greater charges than otherwise would be authorized by this part; or

(11) Violate the provisions of this part or any rule promulgated pursuant thereto.

**History.**

I.C., § 28-46-508, as added by 2006, ch. 323, § 1, p. 1023.

**28-46-509. Exemption.** — The provisions of this part shall not apply to any person licensed or chartered under the laws of any state or of the United



States as a bank, savings and loan association, credit union, insurance company, or industrial loan company. The terms “bank,” “savings and loan association,” “credit union,” “insurance company” and “industrial loan company” shall include employees and agents of such organizations as well as wholly-owned subsidiaries of such organizations, provided that the subsidiary is regularly examined by the chartering state or federal agency for consumer compliance purposes.

**History.**  
I.C., § 28-46-509, as added by 2006, ch. 323, § 1, p. 1023.

CHAPTER 49

RELATIONSHIP TO OTHER LAWS, EFFECTIVE DATE, AND OVERRIDE OF FEDERAL PREEMPTION

28-49-105. Override of federal preemption.

**Collateral References.** Preemption issues under depository institutions deregulation and monetary control act. 28 A.L.R. Fed. 2d 467.

CHAPTER 51

IDENTITY THEFT

SECTION.	SECTION.
28-51-101. Definitions. [Repealed.]	
28-51-102. Block of information appearing as a result of a violation of criminal code provision prohibiting misappropriation of personal information. [Repealed.]	computerized personal information by an agency, individual or a commercial entity.
28-51-104. Definitions.	28-51-106. Procedures deemed in compliance with security breach requirements.
28-51-105. Disclosure of breach of security of	28-51-107. Violations.

28-51-101. Definitions. [Repealed.]

**Compiler’s Notes.** This section, which comprised I.C., § 28-50-101, as added by 2000, ch. 422, § 1, p. 1371; am. and redesign. 2005, ch. 25, § 37, p. 82, was repealed by S.L. 2008, ch. 177, § 1. For present comparable provisions, see § 28-52-101 et seq.

28-51-102. Block of information appearing as a result of a violation of criminal code provision prohibiting misappropriation of personal information. [Repealed.]

**Compiler’s Notes.** This section, which comprised I.C., § 28-50-102, as added by 2000, ch. 422, § 1, p. 1371; am. and redesign. 2005, ch. 25, § 38, p. 82, was repealed by S.L. 2008, ch. 177, § 1. For present comparable provisions, see § 28-52-101 et seq.

28-51-104. Definitions. — For purposes of sections 28-51-104 through 28-51-107, Idaho Code:

- (1) “Agency” means any “public agency” as defined in section 9-337, Idaho Code.
- (2) “Breach of the security of the system” means the illegal acquisition of

unencrypted computerized data that materially compromises the security, confidentiality, or integrity of personal information for one (1) or more persons maintained by an agency, individual or a commercial entity. Good faith acquisition of personal information by an employee or agent of an agency, individual or a commercial entity for the purposes of the agency, individual or the commercial entity is not a breach of the security of the system, provided that the personal information is not used or subject to further unauthorized disclosure.

(3) "Commercial entity" includes corporation, business trust, estate, trust, partnership, limited partnership, limited liability partnership, limited liability company, association, organization, joint venture and any other legal entity, whether for profit or not-for-profit.

(4) "Notice" means:

(a) Written notice to the most recent address the agency, individual or commercial entity has in its records;

(b) Telephonic notice;

(c) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 U.S.C. section 7001; or

(d) Substitute notice, if the agency, individual or the commercial entity required to provide notice demonstrates that the cost of providing notice will exceed twenty-five thousand dollars (\$25,000), or that the number of Idaho residents to be notified exceeds fifty thousand (50,000), or that the agency, individual or the commercial entity does not have sufficient contact information to provide notice. Substitute notice consists of all of the following:

(i) E-mail notice if the agency, individual or the commercial entity has e-mail addresses for the affected Idaho residents; and

(ii) Conspicuous posting of the notice on the website page of the agency, individual or the commercial entity if the agency, individual or the commercial entity maintains one; and

(iii) Notice to major statewide media.

(5) "Personal information" means an Idaho resident's first name or first initial and last name in combination with any one (1) or more of the following data elements that relate to the resident, when either the name or the data elements are not encrypted:

(a) Social security number;

(b) Driver's license number or Idaho identification card number; or

(c) Account number, or credit or debit card number, in combination with any required security code, access code, or password that would permit access to a resident's financial account.

The term "personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records or widely distributed media.

(6) "Primary regulator" of a commercial entity or individual licensed or chartered by the United States is that commercial entity's or individual's primary federal regulator, the primary regulator of a commercial entity or individual licensed by the department of finance is the department of

finance, the primary regulator of a commercial entity or individual licensed by the department of insurance is the department of insurance and, for all agencies and all other commercial entities or individuals, the primary regulator is the attorney general.

**History.**

I.C., § 28-51-104, as added by 2006, ch. 258, § 1, p. 796.

**28-51-105. Disclosure of breach of security of computerized personal information by an agency, individual or a commercial entity.**

— (1) A city, county or state agency, individual or a commercial entity that conducts business in Idaho and that owns or licenses computerized data that includes personal information about a resident of Idaho shall, when it becomes aware of a breach of the security of the system, conduct in good faith a reasonable and prompt investigation to determine the likelihood that personal information has been or will be misused. If the investigation determines that the misuse of information about an Idaho resident has occurred or is reasonably likely to occur, the agency, individual or the commercial entity shall give notice as soon as possible to the affected Idaho resident. Notice must be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement and consistent with any measures necessary to determine the scope of the breach, to identify the individuals affected, and to restore the reasonable integrity of the computerized data system.

When an agency becomes aware of a breach of the security of the system, it shall, within twenty-four (24) hours of such discovery, notify the office of the Idaho attorney general. Nothing contained herein relieves a state agency's responsibility to report a security breach to the office of the chief information officer within the department of administration, pursuant to the information technology resource management council policies.

Any governmental employee that intentionally discloses personal information not subject to disclosure otherwise allowed by law, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than two thousand dollars (\$2,000), or by imprisonment in the county jail for a period of not more than one (1) year, or both.

(2) An agency, individual or a commercial entity that maintains computerized data that includes personal information that the agency, individual or the commercial entity does not own or license shall give notice to and cooperate with the owner or licensee of the information of any breach of the security of the system immediately following discovery of a breach, if misuse of personal information about an Idaho resident occurred or is reasonably likely to occur. Cooperation includes sharing with the owner or licensee information relevant to the breach.

(3) Notice required by this section may be delayed if a law enforcement agency advises the agency, individual or commercial entity that the notice will impede a criminal investigation. Notice required by this section must be made in good faith, without unreasonable delay and as soon as possible after the law enforcement agency advises the agency, individual or commercial entity that notification will no longer impede the investigation.



**History.**  
I.C., § 28-51-105, as added by 2006, ch. 258, § 1, p. 796; am. 2010, ch. 170, § 1, p. 346.  
**Compiler's Notes.** The 2010 amendment,

by ch. 170, in subsection (1), substituted "A city, county or state agency" for "An agency" at the beginning of the first paragraph and added the second and third paragraphs.

**28-51-106. Procedures deemed in compliance with security breach requirements.** — (1) An agency, individual or a commercial entity that maintains its own notice procedures as part of an information security policy for the treatment of personal information, and whose procedures are otherwise consistent with the timing requirements of section 28-51-105, Idaho Code, is deemed to be in compliance with the notice requirements of section 28-51-105, Idaho Code, if the agency, individual or the commercial entity notifies affected Idaho residents in accordance with its policies in the event of a breach of security of the system.

(2) An individual or a commercial entity that is regulated by state or federal law and that maintains procedures for a breach of the security of the system pursuant to the laws, rules, regulations, guidances, or guidelines established by its primary or functional state or federal regulator is deemed to be in compliance with section 28-51-105, Idaho Code, if the individual or the commercial entity complies with the maintained procedures when a breach of the security of the system occurs.

**History.**  
I.C., § 28-51-106, as added by 2006, ch. 258, § 1, p. 796.

**28-51-107. Violations.** — In any case in which an agency's, commercial entity's or individual's primary regulator has reason to believe that an agency, individual or commercial entity subject to that primary regulator's jurisdiction under section 28-51-104(6), Idaho Code, has violated section 28-51-105, Idaho Code, by failing to give notice in accordance with that section, the primary regulator may bring a civil action to enforce compliance with that section and enjoin that agency, individual or commercial entity from further violations. Any agency, individual or commercial entity that intentionally fails to give notice in accordance with section 28-51-105, Idaho Code, shall be subject to a fine of not more than twenty-five thousand dollars (\$25,000) per breach of the security of the system.

**History.**  
I.C., § 28-51-107, as added by 2006, ch. 258, § 1, p. 796.

CHAPTER 52

CREDIT REPORT PROTECTION ACT

SECTION.  
28-52-101. Short title.  
28-52-102. Definitions.  
28-52-103. Security freeze.  
28-52-104. Removal of security freeze — Requirements and timing.

SECTION.  
28-52-105. Exceptions.  
28-52-106. Fees for security freeze.  
28-52-107. Changes to information in a credit report subject to a security freeze.

## SECTION.

28-52-108. Protection of personal information.

## SECTION.

28-52-109. Enforcement.

**28-52-101. Short title.** — This chapter shall be known and cited as the “Credit Report Protection Act.”

**History.**

I.C., § 28-52-101, as added by 2008, ch. 177, § 2, p. 523.

**28-52-102. Definitions.** — In this chapter:

(1) “Consumer” means a natural person.

(2) “Consumer reporting agency” means a person who, for fees, dues or on a cooperative basis, regularly engages in whole or in part in the practice of assembling or evaluating information concerning a consumer’s credit or other information for the purpose of furnishing a credit report to another person.

(3) “Credit report” means a consumer report, as defined in 15 U.S.C. section 1681a, that is used or collected, in whole or in part, for the purpose of serving as a factor in establishing a consumer’s eligibility for credit for personal, family or household purposes.

(4) “Personal information” means personally identifiable financial information provided by a consumer to another person, resulting from any transaction with the consumer or any service performed for the consumer or otherwise obtained by another person. Personal information does not include publicly available information, as that term is defined by regulations prescribed under 15 U.S.C. section 6804, or any list, description or other grouping of consumers, and publicly available information pertaining to consumers that is derived without using any nonpublic personal information. Notwithstanding the foregoing, “personal information” includes any list, description or other grouping of consumers, and publicly available information pertaining to the consumers, that is derived using any nonpublic personal information other than publicly available information.

(5) “Proper identification” has the same meaning as in 15 U.S.C. section 1681h(a)(1) and includes:

(a) The consumer’s full name, including first, middle and last names and any suffix;

(b) Any name the consumer previously used;

(c) The consumer’s current and recent full addresses, including street address, any apartment number, city, state and zip code;

(d) The consumer’s social security number; and

(e) The consumer’s date of birth.

(6) “Security freeze” means a prohibition, consistent with section 28-52-103, Idaho Code, on a consumer reporting agency’s furnishing of a consumer’s credit report to a third party intending to use the credit report to determine the consumer’s eligibility for credit.

**History.**

I.C., § 28-52-102, as added by 2008, ch. 177, § 2, p. 523.

**28-52-103. Security freeze.** — (1) A consumer may place a security freeze on the consumer's credit report by:

- (a) Making a request to a consumer reporting agency in writing by regular or certified mail at an address designated by the consumer reporting agency to receive the request;
- (b) Providing proper identification; and
- (c) Paying the fee required by the consumer reporting agency in accordance with section 28-52-106, Idaho Code.

(2) Upon receiving a request from a consumer under subsection (1) of this section, the consumer reporting agency shall:

- (a) Place a security freeze on the consumer's credit report within three (3) business days after receiving the consumer's request; and
- (b) Within five (5) business days after placing the security freeze, send a written confirmation of the security freeze to the consumer and provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorizations for removal or temporary lifts of the security freeze under section 28-52-104, Idaho Code.

(3) If a security freeze is in place, a consumer reporting agency may not release a consumer's credit report, or information from the credit report, to a third party that intends to use the information to determine a consumer's eligibility for credit without prior authorization from the consumer.

(4) Notwithstanding subsection (3) of this section, a consumer reporting agency may communicate to a third party requesting a consumer's credit report that a security freeze is in effect on the consumer's credit report. If a third party requesting a consumer's credit report in connection with the consumer's application for credit is notified of the existence of a security freeze under this section, the third party may treat the consumer's application as incomplete.

(5) A consumer reporting agency shall require proper identification of the consumer requesting to place, remove or temporarily remove a security freeze.

(6) A consumer reporting agency shall develop a contact method to receive and process a consumer's request to permanently remove or temporarily lift a security freeze. The contact method may include: a postal address; an electronic contact method chosen by the consumer reporting agency, which may include the use of fax, internet or other electronic means; or the use of telephone in a manner that is consistent with any federal requirements placed on the consumer reporting agency. By no later than September 1, 2008, a consumer reporting agency shall develop a secure electronic means for a consumer to request the temporary lift of a security freeze.

(7) A security freeze placed under this section may be removed only in accordance with section 28-52-104, Idaho Code.



**History.**

I.C., § 28-52-103, as added by 2008, ch. 177, § 2, p. 523.

**28-52-104. Removal of security freeze — Requirements and timing.** — (1) A consumer reporting agency may remove a security freeze from a consumer's credit report only if the consumer reporting agency receives the consumer's request through a contact method established and required in accordance with subsection (6) of section 28-52-103, Idaho Code, and the consumer reporting agency receives the consumer's proper identification and other information sufficient to identify the consumer, including the consumer's personal identification number or password; or the consumer makes a material misrepresentation of fact in connection with the placement of the security freeze and the consumer reporting agency notifies the consumer in writing before removing the security freeze.

(2) A consumer reporting agency shall temporarily lift a security freeze upon receipt of the consumer's request through the contact method established by the consumer reporting agency in accordance with subsection (6) of section 28-52-103, Idaho Code, along with:

- (a) The consumer's proper identification and other information sufficient to identify the consumer;
- (b) The consumer's personal identification number or password;
- (c) The proper information regarding the third party who is to receive the credit report or the time period for which the credit report is to be available to users of the credit report; and
- (d) A fee, if applicable.

(3) A consumer reporting agency shall remove or temporarily lift a security freeze from a consumer's credit report as follows:

- (a) Except as provided in paragraph (b) of this subsection regarding temporary lifts, within three (3) business days after the business day on which the consumer's written request to remove or temporarily lift the security freeze is received by the consumer reporting agency using a contact method chosen by the consumer reporting agency in accordance with subsection (6) of section 28-52-103, Idaho Code; and
- (b) On and after September 1, 2008, within fifteen (15) minutes after the consumer's request to temporarily lift the security freeze is received by the consumer reporting agency through the electronic contact method chosen by the consumer reporting agency in accordance with subsection (6) of section 28-52-103, Idaho Code, if such request is received between 6:00 a.m. and 9:30 p.m. mountain time.

(4) A consumer reporting agency need not remove or temporarily lift a security freeze within the time specified in subsection (3) of this section if the consumer fails to meet the requirements of subsection (1) or (2) of this section, as applicable, or the consumer reporting agency's ability to remove the security freeze within such time is prevented by:

- (a) An act of God, including fire, earthquake, hurricane, storm or similar natural disaster or phenomenon;
- (b) Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations, or similar occurrence;

- (c) Operation interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failures inhibiting response time, or similar disruption;
- (d) Governmental action, including emergency order or regulation, judicial or law enforcement action or similar directive;
- (e) Regularly scheduled maintenance, during other than normal business hours, of, or updates to, the consumer reporting agency's systems;
- (f) Commercially reasonable maintenance of, or repair to, the consumer reporting agency's systems that is unexpected or unscheduled; or
- (g) Receipt of a removal request outside of normal business hours.

**History.**

I.C., § 28-52-104, as added by 2008, ch. 177, § 2, p. 524.

**28-52-105. Exceptions.** — (1) Notwithstanding subsection (1) of section 28-52-103, Idaho Code, a consumer reporting agency may furnish a consumer's credit report to a third party if the purpose of the credit report is to:

- (a) Use the credit report for purposes permitted under 15 U.S.C. section 1681b(c);
- (b) Review the consumer's account with the third party, including for account maintenance or monitoring credit line increases or other upgrades or enhancements;
- (c) Collect on a financial obligation owed by the consumer to the third party requesting the credit report; or
- (d) Review the consumer's account with another person, or collect on a financial obligation owed by the consumer to another person and the credit report request is for purposes permitted under 15 U.S.C. section 1681b(c) or the third party requesting the credit report is a subsidiary, affiliate, agent, assignee or prospective assignee of the person holding the consumer's account or to whom the consumer owes a financial obligation.

(2) The consumer's request for a security freeze does not prohibit the consumer reporting agency from disclosing the consumer's credit report for other than credit related purposes consistent with the definition of credit report in section 28-52-102, Idaho Code. The following list identifies the types of credit report disclosures by consumer reporting agencies to third parties that are not prohibited by a security freeze:

- (a) The third party does not use the credit report for the purpose of serving as a factor in establishing a consumer's eligibility for credit;
- (b) The third party is acting under a court order, warrant or subpoena requiring release of the credit report;
- (c) The third party is a child support agency, or its agent or assignee acting under part D, title IV, of the social security act or a similar state law;
- (d) The third party is the federal department of health and human services or a similar state agency, or its agent or assignee, investigating medicare or medicaid fraud;
- (e) The purpose of the credit report is to investigate or collect delinquent taxes, assessments or unpaid court orders and the third party is the

federal internal revenue service; a state taxing authority; the division of motor vehicles of the Idaho transportation department; a county, municipality or other taxing district; a federal, state or local law enforcement agency; or the agent or assignee listed in subsection (1) or (2) of this section;

(f) The third party is using the information solely for criminal record information, tenant screening, employment screening, fraud prevention or detection, or personal loss history information;

(g) The third party is a person or entity regulated under title 41, Idaho Code;

(h) The third party is administering a credit file monitoring service to which the consumer has subscribed; or

(i) The third party requests the credit report for the sole purpose of providing the consumer with a copy of the consumer's credit report or credit score upon the consumer's request.

(3) Section 28-52-103, Idaho Code, does not apply to:

(a) A consumer reporting agency, the sole purpose of which is to resell credit information by assembling and merging information contained in the database of another consumer reporting agency and that does not maintain a permanent database of credit information from which a consumer's credit report is produced;

(b) A check services or fraud prevention services company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers or similar methods of payment; or

(c) A deposit account information service company that issues reports concerning account closures based on fraud, substantial overdrafts, automated teller machine abuse or similar information concerning a consumer to a requesting financial institution for the purpose of evaluating a consumer's request to create a deposit account.

(4) Nothing in this chapter prohibits a person from obtaining, aggregating or using information lawfully obtained from public records in a manner that does not otherwise violate the provisions of this chapter.

**History.**

I.C., § 28-52-105, as added by 2008, ch. 177, § 2, p. 525.

**Compiler's Notes.** Part D, title IV, of the

social security act, referred to in paragraph (2)(c), is codified as 42 U.S.C.S. § 651 et seq.

**28-52-106. Fees for security freeze.** — (1) Except as provided in subsection (2) of this section, a consumer reporting agency may charge an administrative fee, not to exceed six dollars (\$6.00), to a consumer for each placement of a security freeze, and six dollars (\$6.00) for each temporary lift of a security freeze. A consumer reporting agency may not charge an administrative fee for a removal of a security freeze.

(2) A consumer reporting agency may not charge a fee under section 28-52-103(1)(c), Idaho Code, to a consumer who has been the victim of identity theft and who has submitted to the consumer reporting agency a valid police report, an investigative report or complaint that the consumer has filed with a law enforcement agency.



(3) A consumer may be charged a reasonable fee, not to exceed ten dollars (\$10.00), if the consumer fails to retain the original personal identification number, password or other device provided by the consumer reporting agency and if the consumer asks the consumer reporting agency to reissue the same or a new personal identification number, password or other device.

**History.**

I.C., § 28-52-106, as added by 2008, ch. 177, § 2, p. 527.

**28-52-107. Changes to information in a credit report subject to a security freeze.** — (1) If a credit report is subject to a security freeze, a consumer reporting agency shall notify the consumer who is the subject of the credit report within thirty (30) days if the consumer reporting agency changes the consumer's name, date of birth, social security number or address.

(2) Notwithstanding subsection (1) of this section, a consumer reporting agency may make technical modifications to information in a credit report that is subject to a security freeze without providing notification to the consumer. Technical modifications include the addition or subtraction of abbreviations to names and addresses and transpositions or corrections of incorrect numbering or spelling.

(3) When providing notice of a change of address under subsection (1) of this section, the consumer reporting agency shall provide notice to the consumer at both the new address and the former address.

**History.**

I.C., § 28-52-107, as added by 2008, ch. 177, § 2, p. 527.

**28-52-108. Protection of personal information.** — (1) Except as otherwise specifically provided by law, a person shall not intentionally communicate an individual's social security number to the general public.

(2) The state of Idaho, a department, agency, board, commission or other political subdivision may not employ or contract for the employment of an inmate in any facility operated by the department of correction or private correctional facility contracted with the department of correction or county jail in any capacity that would allow any inmate access to any other person's personal information.

**History.**

I.C., § 28-52-108, as added by 2008, ch. 177, § 2, p. 527.

**28-52-109. Enforcement.** — (1) Except as otherwise specified in this section, any credit reporting agency that willfully fails to comply with any requirement imposed under this chapter with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(a) Any actual damages sustained by the consumer as a result of the failure or damages of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000); or

- (b) Such amount of punitive damages as the court may allow; and
- (c) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(2) Any person who obtains a consumer report, requests a security freeze, requests the temporary lifting of a freeze or requests the removal of a security freeze from a consumer reporting agency under false pretenses or in an attempt to violate federal or state law shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or one thousand dollars (\$1,000), whichever is greater.

(3) Any credit reporting agency who is negligent in failing to comply with any requirement imposed under this chapter with respect to any consumer is liable to that consumer in an amount equal to the sum of:

- (a) Any actual damages sustained by the consumer as a result of the failure; and
- (b) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(4) Upon a finding by the court that an unsuccessful pleading, motion or other paper filed in connection with an action under this chapter was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

(5) The attorney general may enforce this chapter's provisions and, notwithstanding any other provision of law, the attorney general has exclusive authority to bring an action against a credit reporting agency for violation of section 28-52-104(3)(b), Idaho Code, concerning the requirement that a credit reporting agency temporarily lift a freeze within fifteen (15) minutes. In an action by the attorney general, a credit reporting agency that violates this chapter's provisions is subject to a civil penalty not less than one hundred dollars (\$100) or greater than one thousand dollars (\$1,000) for a violation or series of violations concerning a specific consumer and no greater than one hundred thousand dollars (\$100,000) in the aggregate for related violations concerning more than one (1) consumer. In addition to the penalties provided in this section, the attorney general may seek injunctive relief to prevent future violations of this chapter in the district court in Ada county or in the district court for the district in which a consumer resides who is the subject of a credit report on which a violation occurs.

**History.**

I.C., § 28-52-109, as added by 2008, ch. 177, § 2, p. 528.

# TITLE 29

## CONTRACTS

### CHAPTER.

1. GENERAL PROVISIONS RELATING TO CONTRACTS,  
§§ 29-110, 29-116.

### CHAPTER 1

#### GENERAL PROVISIONS RELATING TO CONTRACTS

### SECTION.

- 29-110. Limitations on right to sue under contract or franchise agreement.

### SECTION.

- 29-116. Computer information agreements.

### 29-102. Enforcement by beneficiary.

#### Beneficiaries.

Client, the promisor, directed his promise to pay to the company, making the company the named promisee of the note, and as such, the company did not have an enforceable right against the client as a third party beneficiary but, rather, had an enforceable right as the

promisee of the note so long as the note was otherwise enforceable; thus, the district court's holding that the company may enforce the note as a third party beneficiary was made in error. *Sirius LC v. Erickson*, 144 Idaho 38, 156 P.3d 539 (2007).

### 29-103. Presumption of consideration.

#### ANALYSIS

Consideration.  
—Sufficiency.

#### Consideration.

—Sufficiency.

In a dispute involving restrictive covenants,

an owner failed to meet his burden of showing that new members did not give consideration when joining the estate and signing an amended covenant; by signing the document, the new members agreed to be bound by all of the terms contained therein. *Best Hill Coalition v. HALKO, LLC*, 144 Idaho 813, 172 P.3d 1088 (2007).

### 29-104. Want of consideration — Burden of proof.

#### Burden Not Met.

In a dispute involving restrictive covenants, an owner failed to meet his burden of showing that new members did not give consideration when joining the estate and signing an

amended covenant; by signing the document, the new members agreed to be bound by all of the terms contained therein. *Best Hill Coalition v. HALKO, LLC*, 144 Idaho 813, 172 P.3d 1088 (2007).

### 29-109. Construction of conflicting provisions.

#### Addenda.

In a dispute over a land-sale contract, even though addenda were controlling over inconsistent provisions in a pre-printed contract, they did not create any additional duty on the

part of the seller beyond his obligation to make a good faith effort to obtain marketable title. *Johnson v. Lambros*, 143 Idaho 468, 147 P.3d 100 (Ct. App. 2006).

### 29-110. Limitations on right to sue under contract or franchise



**agreement.** — (1) Every stipulation or condition in a contract, by which any party thereto is restricted from enforcing his rights under the contract in Idaho tribunals, or which limits the time within which he may thus enforce his rights, is void as it is against the public policy of Idaho. Nothing in this section shall affect contract provisions relating to arbitration so long as the contract does not require arbitration to be conducted outside the state of Idaho.

(2) Any condition, stipulation or provision in a franchise agreement is void to the extent it purports to waive, or has the effect of waiving, venue or jurisdiction of the state of Idaho's court system. Any condition, stipulation or provision in a franchise agreement, to the extent it purports to assert, or has the effect of asserting, the choice of law is enforceable. This subsection shall apply to any franchise agreement entered into or renewed on or after July 1, 2003, by any person who at the time of entering into or renewing such franchise agreement was a resident of this state or incorporated or organized under the laws of this state.

(3) As used in this section "franchise agreement" means a written contract or agreement by which:

(a) A person ("franchisee") is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system prescribed in substantial part by a third party ("franchisor");

(b) The operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising or other commercial symbol designating the franchisor of such plan or system; and

(c) The franchisee is required to pay the franchisor one thousand dollars (\$1,000) or more for the right to transact business pursuant to the plan or system. Such payments shall not include amounts paid:

(i) As a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring the credit card; or

(ii) For the purchase of goods at a bona fide wholesale price.

**History.**

R.S., § 3229; reen. R.C. & C.L., § 3321; C.S., § 5670; I.C.A., § 28-110 am. 2003, ch. 378, § 1, p. 1010; am. 2012, ch. 328, § 1, p. 909.

**Compiler's Notes.** The words enclosed in parentheses so appeared in the law as enacted.

The 2012 amendment, by ch. 328, inserted "under contract or" in the section heading; in subsection (1), substituted "under the contract in Idaho tribunals" for "under the contract by the usual proceedings in the ordinary tribunals" and added "as it is against the public policy of Idaho" in the first sentence; and added the last sentence.

**29-116. Computer information agreements.** — (1) In an action based on a computer information agreement that contains a choice of laws provision that would result in application of the uniform computer information transactions act to such computer information agreement, such choice of laws provision is voidable by the party against whom enforcement is sought, and the agreement will be governed by the laws of the state of Idaho if either party is a resident of this state or has its principal place of business located in this state.

(2) In an action based on a computer information agreement that does not contain a choice of laws provision, any party may object to the application of the uniform computer information transactions act to such computer information agreement. If such an objection is made, the agreement will be governed by the laws of the state of Idaho if either party is a resident of this state or has its principal place of business in this state.

(3) This section may not be varied or invalidated by the agreement of the parties.

(4) As used in this section:

(a) "Computer information" means information in electronic form that is obtained from or through the use of a computer or that is in a form capable of being processed by a computer.

(b) "Computer information agreement" means a contract or agreement to create, modify, transfer, license or otherwise use computer information or rights in computer information, or to perform or support such creation, modification, transfer, license or use.

(c) "Party" means a party to a computer information agreement.

(d) "Uniform computer information transactions act" means the uniform computer information transactions act as approved by the national conference of commissioners on uniform state laws and enacted in any jurisdiction, or any substantially similar law enacted in any jurisdiction.

**History.**

I.C., § 29-116, as added by 2007, ch. 286,  
§ 1, p. 815.





# TITLE 30

## CORPORATIONS

### CHAPTER.

1. GENERAL BUSINESS CORPORATIONS, §§ 30-1-120, 30-1-122, 30-1-125, 30-1-141, 30-1-202, 30-1-401, 30-1-501 — 30-1-504, 30-1-703, 30-1-720, 30-1-809, 30-1-858, 30-1-901, 30-1-902, 30-1-920, 30-1-922, 30-1-924, 30-1-1005, 30-1-1022, 30-1-1100, 30-1-1107, 30-1-1330, 30-1-1407, 30-1-1408, 30-1-1420, 30-1-1421, 30-1-1431, 30-1-1503, 30-1-1504, 30-1-1507 — 30-1-1509, 30-1-1530, 30-1-1604, 30-1-1605, 30-1-1622.
3. IDAHO NONPROFIT CORPORATION ACT, §§ 30-3-2, 30-3-4, 30-3-7, 30-3-8, 30-3-17, 30-3-30 — 30-3-33, 30-3-48, 30-3-50, 30-3-54, 30-3-90, 30-3-100A, 30-3-104, 30-3-115 — 30-3-115C, 30-3-118, 30-3-119, 30-3-122 — 30-3-128.

### CHAPTER.

4. IDAHO REGISTERED AGENTS ACT, §§ 30-401 — 30-418.
6. IDAHO UNIFORM LIMITED LIABILITY COMPANY ACT, §§ 30-6-101 — 30-6-1104.
9. IDAHO ESCROW ACT, §§ 30-907, 30-914, 30-920, 30-935.
13. PROFESSIONAL SERVICE CORPORATIONS, §§ 30-1309A, 30-1312.
14. UNIFORM SECURITIES ACT (2004), §§ 30-14-102, 30-14-202, 30-14-302, 30-14-402, 30-14-412 — 30-14-502, 30-14-603, 30-14-611.
18. IDAHO ENTITY TRANSACTIONS ACT, §§ 30-18-101 — 30-18-713.
19. SUCCESSOR CORPORATION ASBESTOS-RELATED LIABILITY FAIRNESS ACT, §§ 30-1901 — 30-1907.

## CHAPTER 1

### GENERAL BUSINESS CORPORATIONS

#### PART 1. GENERAL PROVISIONS

##### SECTION.

- 30-1-120. Requirements for documents — Extrinsic facts.
- 30-1-122. Filing, service, and copying fees.
- 30-1-125. Filing duty of secretary of state.
- 30-1-141. Notice.

#### PART 2. INCORPORATION

- 30-1-202. Articles of incorporation.

#### PART 4. NAME

- 30-1-401. Corporate name.

#### PART 5. OFFICE AND AGENT

- 30-1-501. Registered office and registered agent. [Repealed.]
- 30-1-502. Change of registered office or registered agent. [Repealed.]
- 30-1-503. Resignation of registered agent. [Repealed.]
- 30-1-504. Service on corporation. [Repealed.]

#### PART 7. SHAREHOLDERS

- 30-1-703. Court-ordered meeting.
- 30-1-720. Shareholders' list for meeting.

#### PART 8. DIRECTORS AND OFFICERS

- 30-1-809. Removal of directors by judicial proceeding.

##### SECTION.

- 30-1-858. Variation by corporate action — Application of indemnification provisions.

#### PART 9. DOMESTICATION

- 30-1-901. Excluded transactions. [Repealed.]
- 30-1-902. Required approvals. [Repealed.]
- 30-1-920. Domestication. [Repealed.]
- 30-1-922. Articles of domestication. [Repealed.]
- 30-1-924. Effect of domestication. [Repealed.]

#### PART 10. AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

- 30-1-1005. Amendment by board of directors.
- 30-1-1022. [Amended and Redesignated.]

#### PART 11. MERGER AND SHARE EXCHANGE

- 30-1-1100. Applicability of Idaho entity transactions act.
- 30-1-1107. Effect of merger or share exchange.

#### PART 13. APPRAISAL RIGHTS

- 30-1-1330. Court action.

#### PART 14. DISSOLUTION

- 30-1-1407. Other claims against dissolved corporation.
- 30-1-1408. Court proceeding.

## SECTION.

30-1-1420. Grounds for administrative dissolution.

30-1-1421. Procedure for and effect of administrative dissolution.

30-1-1431. Procedure for judicial dissolution.

## PART 15. FOREIGN CORPORATIONS

30-1-1503. Application for certificate of authority.

30-1-1504. Amended certificate of authority.

30-1-1507. Registered office and registered agent of foreign corporation. [Repealed.]

30-1-1508. Change of registered office or reg-

## SECTION.

istered agent of foreign corporation. [Repealed.]

30-1-1509. Resignation of registered agent of foreign corporation. [Repealed.]

30-1-1530. Grounds for revocation of certificate of authority.

## PART 16. RECORDS AND REPORTS

30-1-1604. Court-ordered inspection.

30-1-1605. Inspection of records by directors.

30-1-1622. Annual report for secretary of state.

## PART 1. GENERAL PROVISIONS

**30-1-120. Requirements for documents — Extrinsic facts. —** (1) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the secretary of state.

(2) This chapter must require or permit filing the document in the office of the secretary of state.

(3) The document must contain the information required by this chapter. It may contain other information as well.

(4) The document must be typewritten or printed or, if electronically transmitted, it must be in a format that can be retrieved or reproduced in typewritten or printed form.

(5) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(6) Except as otherwise permitted by section 30-1-1622, Idaho Code, the document must be executed:

(a) By the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) If the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary.

(7) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The document may but need not contain a corporate seal, attestation, acknowledgment or verification.

(8) If the secretary of state has prescribed a mandatory form for the document under section 30-1-121, Idaho Code, the document must be in or on the prescribed form.

(9) The document must be delivered to the office of the secretary of state for filing. Delivery may be made by electronic transmission if and to the

extent permitted by the secretary of state. If it is filed in typewritten or printed form and not transmitted electronically, the secretary of state may require one (1) exact or conformed copy to be delivered with the document.

(10) When the document is delivered to the office of the secretary of state for filing, the correct filing fee, and any other fee or penalty required to be paid therewith by this chapter or other law must be paid or provision for payment made in a manner permitted by the secretary of state.

(11) Whenever a provision of this chapter permits any of the terms of a plan or a filed document to be dependent upon facts objectively ascertainable outside the plan or filed document, the following provisions apply:

(a) The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document.

(b) The facts may include, but are not limited to:

(i) Any of the following that are available in a nationally recognized news or information medium either in print or electronically: statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data;

(ii) A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

(iii) The terms of, or actions taken under, an agreement or document to which the corporation is a party, or any other agreement or document.

(c) As used in this subsection:

(i) "Filed document" means a document filed with the secretary of state under any provision of this chapter except part 15 or section 30-1-1622, Idaho Code; and

(ii) "Plan" means a plan of domestication, merger or share exchange.

(d) The following provisions of a plan or filed document may not be made dependent upon facts outside the plan or filed document:

(i) The name and address of any person required in a filed document;

(ii) The registered office of any entity required in a filed document;

(iii) The registered agent of any entity required in a filed document;

(iv) The number of authorized shares and designation of each class or series of shares;

(v) The effective date of a filed document;

(vi) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

(e) If a provision of a filed document is made dependent upon a fact ascertainable outside of the filed document, and that fact is not ascertainable by reference to a source described in subsection (11)(b)(i) of this section or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the secretary of state articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under this subsection (11)(e) are deemed to be authorized by the authorization of the original filed document or plan to which they relate



and may be filed by the corporation without further action by the board of directors or the shareholders.

**History.**  
I.C., § 30-1-120, as added by 1997, ch. 366, § 2, p. 1080; am. 1998, ch. 222, § 1, p. 764; am. 2004, ch. 324, § 1, p. 907; am. 2007, ch. 314, § 2, p. 887.

**Compiler's Notes.** The 2007 amendment, by ch. 314, deleted "except as provided in sections 30-1-503 and 30-1-1509, Idaho Code" from the end in subsection (9).

**30-1-122. Filing, service, and copying fees.** — (1) The secretary of state shall collect the following fees when the documents described in this subsection are delivered to him for filing:

Document	Fee
(a) Articles of incorporation.....	\$100.00
(b) Application for use of deceptively similar name.....	\$ 20.00
(c) Application for reserved name.....	\$ 20.00
(d) Notice of transfer of reserved name.....	\$ 20.00
(e) Application for registered name.....	\$ 60.00
(f) Application for renewal of registered name.....	\$ 60.00
(g) Amendment of articles of incorporation.....	\$ 30.00
(h) Restatement of articles of incorporation with amendment of articles.....	\$ 30.00
(i) Articles of merger or share exchange.....	\$ 30.00
(j) Articles of dissolution.....	\$ 30.00
(k) Articles of revocation of dissolution.....	\$ 30.00
(l) Certificate of administrative dissolution.....	No fee
(m) Application for reinstatement following administrative dissolution.....	\$ 30.00
(n) Certificate of reinstatement.....	No fee
(o) Certificate of judicial dissolution.....	No fee
(p) Application for certificate of authority.....	\$100.00
(q) Application for amended certificate of authority.....	\$ 30.00
(r) Application for certificate of withdrawal.....	\$ 20.00
(s) Certificate of revocation of authority to transact business....	No fee
(t) Annual report.....	No fee
(u) Articles of correction.....	\$ 30.00
(v) Certificate of existence or authorization.....	\$ 10.00
(w) Any other document required or permitted to be filed by this chapter .....	\$ 20.00
(x) Any document when the filing party requires the certificate therefor to be returned within eight (8) working hours, a surcharge of.....	\$ 20.00
(y) Any nontyped document which requires a fee, a surcharge of.....	\$ 20.00

(2) The secretary of state shall collect a fee of ten dollars (\$10.00) each time process is served on him under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if he prevails in the proceeding.

(3) The secretary of state shall collect the following fees for copying and

certifying the copy of any filed document relating to a domestic or foreign corporation:

- (a) Twenty-five cents (25¢) per page for copying; and
- (b) Ten dollars (\$10.00) for the certificate.

**History.**

I.C., § 30-1-122, as added by 1997, ch. 366, § 2, p. 1080; am. 2007, ch. 314, § 3, p. 887.

**Compiler's Notes.** The 2007 amendment, by ch. 314, deleted former subsections (1)(g) through (1)(i), which were the listings for the

documents "Corporation's statement of change of registered agent or registered office or both," "Agent's statement of change of registered office for each affected corporation," and "Agent's statement of resignation," respectively, and made related redesignations.

**30-1-125. Filing duty of secretary of state.** — (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of section 30-1-120, Idaho Code, the secretary of state shall file it.

(2) The secretary of state files a document by recording it as filed on the date and time of receipt. After filing a document, the secretary of state shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgment of the date and time of filing.

(3) If the secretary of state refuses to file a document, he shall return it to the domestic or foreign corporation or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason for his refusal.

(4) The secretary of state's duty to file documents under this section is ministerial. His filing or refusing to file a document does not:

- (a) Affect the validity or invalidity of the document in whole or part;
- (b) Relate to the correctness or incorrectness of information contained in the document;
- (c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

**History.**

I.C., § 30-1-125, as added by 1997, ch. 366, § 2, p. 1080; am. 2007, ch. 314, § 4, p. 887.

**Compiler's Notes.** The 2007 amendment,

by ch. 314, deleted "except as provided in sections 30-1-503 and 30-1-1509, Idaho Code" following "After filing a document" in the second sentence in subsection (2).

**30-1-141. Notice.** — (1) Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is written notice.

(2) Notice may be communicated in person; by mail or other method of delivery; or by telephone, voice mail or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective:

- (a) Upon deposit in the United States mail, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders; or

(b) When electronically transmitted to the shareholder in a manner authorized by the shareholders.

(4) Written notice to a domestic or foreign corporation, authorized to transact business in this state, may be addressed to its registered agent or to the corporation or its secretary at its correspondence address shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) Except as provided in subsection (3) of this section, written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) When received;

(b) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed;

(c) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice is effective when communicated if communicated in a comprehensible manner.

(7) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this chapter, those requirements govern.

#### **History.**

I.C., § 30-1-141, as added by 1997, ch. 366,  
§ 2, p. 1080; am. 2007, ch. 314, § 5, p. 887.

#### **Compiler's Notes.**

The 2007 amendment, by ch. 314, deleted "at its registered office" following "registered agent" in subsection (4).

## **PART 2. INCORPORATION**

**30-1-202. Articles of incorporation.** — (1) The articles of incorporation must set forth:

(a) A corporate name for the corporation that satisfies the requirements of section 30-1-401, Idaho Code;

(b) The number of shares the corporation is authorized to issue;

(c) The information required by section 30-405(1), Idaho Code; and

(d) The name and address of each incorporator.

(2) The articles of incorporation may set forth:

(a) The names and addresses of the individuals who are to serve as the initial directors;

(b) Provisions not inconsistent with law regarding:

(i) The purpose or purposes for which the corporation is organized,

(ii) Managing the business and regulating the affairs of the corporation,

(iii) Defining, limiting and regulating the powers of the corporation, its board of directors, and shareholders,

(iv) A par value for authorized shares or classes of shares,

(v) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

(c) Any provision that under this chapter is required or permitted to be set forth in the bylaws;



(d) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for:

- (i) The amount of a financial benefit received by a director to which he is not entitled,
- (ii) An intentional infliction of harm on the corporation or the shareholders,
- (iii) A violation of section 30-1-833, Idaho Code, or
- (iv) An intentional violation of criminal law; and

(e) A provision permitting or making obligatory indemnification of a director for liability, as defined in section 30-1-850(5), Idaho Code, to any person for any action taken, or any failure to take any action, as a director, except liability for:

- (i) Receipt of a financial benefit to which he is not entitled,
- (ii) An intentional infliction of harm on the corporation or its shareholders,
- (iii) A violation of section 30-1-833, Idaho Code, or
- (iv) An intentional violation of criminal law.

(3) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

(4) Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with section 30-1-120(11), Idaho Code.

#### **History.**

I.C., § 30-1-202, as added by 1997, ch. 366, § 2, p. 1080; am. 2004, ch. 324, § 3, p. 907; am. 2007, ch. 314, § 6, p. 887.

**Compiler's Notes.** The 2007 amendment, by ch. 314, rewrote subsection (1)(c), which

formerly read: "The street address of the corporation's initial registered office and the name of its initial registered agent at that office"; and updated the section reference in subsection (4).

### **PART 4. NAME**

**30-1-401. Corporate name.** — (1) A corporate name:

(a) Must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," or words or abbreviations of like import in another language; provided however, that if the word "company" or its abbreviation is used it shall not be immediately preceded by the word "and" or by an abbreviation of or symbol representing the word "and";

(b) May not contain language falsely stating or implying government affiliation or stating or implying that the corporation is organized for a purpose other than that permitted by section 30-1-301, Idaho Code, and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4) of this section, a corporate name must be distinguishable upon the records of the secretary of state from:

(a) The corporate name of a corporation incorporated or authorized to transact business in this state;

(b) A name reserved or registered under section 30-1-402 or 30-1-403,

Idaho Code, or reserved under section 53-2-109, Idaho Code, or as reserved under section 30-6-109 or 53-603, Idaho Code, as appropriate pursuant to section 30-6-1104, Idaho Code;

(c) The fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(d) The corporate name of a nonprofit corporation incorporated or authorized to transact business in this state; and

(e) The name of any limited partnership, limited liability partnership or limited liability company which is organized under the laws of this state or registered to do business in this state.

(3) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable on his records from one (1) or more of the names described in subsection (2) of this section. The secretary of state shall authorize use of the name applied for if:

(a) The other corporation, holder of a reserved or registered name, limited partnership, limited liability partnership or limited liability company consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation or limited liability company that is used in this state if the other corporation or limited liability company is organized or authorized to transact business in this state and the proposed user corporation:

(a) Has merged with the other corporation or limited liability company;

(b) Has been formed by reorganization of the other corporation or limited liability company; or

(c) Has acquired all or substantially all of the assets, including the name, of the other corporation or limited liability company.

(5) This chapter does not control the use of assumed business names, governed by "The Assumed Business Names Act of 1997," chapter 5, title 53, Idaho Code.

(6) Nothing in this section shall abrogate or limit the law as to unfair competition or unfair practice in the use of trade names, nor derogate from the common law, the principles of equity, or the statutes of this state or of the United States with respect to the right to acquire and protect trade names.

(7) The assumption of a name in violation of this section shall not affect or vitiate the corporate existence, but the courts of this state, having equity jurisdiction, may, upon the application of the state, or of any person, unincorporated association, or corporation interested or affected, enjoin such corporation in violation from doing business under any name assumed in violation of this section.

**History.**

I.C., § 30-1-401, as added by 1997, ch. 366, § 2, p. 1080; am. 1999, ch. 212, § 1, p. 563; am. 2005, ch. 272, § 1, p. 836; am. 2006, ch. 144, § 3, p. 407; am. 2008, ch. 176, § 2, p. 518.

**Compiler's Notes.** The 2006 amendment, by ch. 144, substituted "53-2-109" for "53-203" in subsection (2)(b).

The 2008 amendment, by ch. 176, in subsection (2)(b), inserted "Idaho Code, or as reserved under section 30-6-109" and added "as appropriate pursuant to section 30-6-1104, Idaho Code."

Section 6 of S.L. 2008, ch. 176 provided that the amendment of this section should take effect on and after July 1, 2008.

PART 5. OFFICE AND AGENT

**30-1-501. Registered office and registered agent. [Repealed.]**

**Compiler's Notes.** This section, which comprised I.C., § 30-1-501, as added by 1997, ch. 366, § 2, p. 1080, was repealed by S.L. 2007, ch. 314, § 7. See § 30-401 et seq.

**30-1-502. Change of registered office or registered agent. [Repealed.]**

**Compiler's Notes.** This section, which comprised I.C., § 30-1-502, as added by 1997, ch. 366, § 2, p. 1080, was repealed by S.L. 2007, ch. 314, § 7. See § 30-401 et seq.

**30-1-503. Resignation of registered agent. [Repealed.]**

**Compiler's Notes.** This section, which comprised I.C., § 30-1-503, as added by 1997, ch. 366, § 2, p. 1080, was repealed by S.L. 2007, ch. 314, § 7. See § 30-401 et seq.

**30-1-504. Service on corporation. [Repealed.]**

**Compiler's Notes.** This section, which comprised I.C., § 30-1-504, as added by 1997, ch. 366, § 2, p. 1080, was repealed by S.L. 2007, ch. 314, § 7. See § 30-401 et seq.

PART 6. SHARES AND DISTRIBUTIONS

**30-1-626. Shares without certificates.**

**Piercing the Corporate Veil.**

Where a creditor sought to establish a cause of action against debtors for nondischargeability of debt based on fraud by the manager of debtors' transmission company, although piercing the corporate veil was

warranted because corporate formalities were not appropriately observed, the claim failed because the creditor's mistrust precluded justified reliance. *Fetty v. DL Carlson Enters. Inc.* (In re Carlson), 426 B.R. 840 (Bankr. D. Idaho 2010).

PART 7. SHAREHOLDERS

**30-1-701. Annual meeting.**

**Piercing the Corporate Veil.**

Where a creditor sought to establish a cause of action against debtors for nondischargeability of debt based on fraud by the manager of debtors' transmission company, although piercing the corporate veil was

warranted because corporate formalities were not appropriately observed, the claim failed because the creditor's mistrust precluded justified reliance. *Fetty v. DL Carlson Enters. Inc.* (In re Carlson), 426 B.R. 840 (Bankr. D. Idaho 2010).

**30-1-703. Court-ordered meeting. —** (1) The Idaho district court of



the county where a corporation's principal office is located, or, if none in this state, Ada county, may summarily order a meeting to be held:

- (a) On application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within fifteen (15) months after its last annual meeting; or
- (b) On application of a shareholder who signed a demand for a special meeting valid under section 30-1-702, Idaho Code, if:
  - (i) Notice of the special meeting was not given within thirty (30) days after the date the demand was delivered to the corporation's secretary, or
  - (ii) The special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

**History.**

I.C., § 30-1-703, as added by 1997, ch. 366, § 2, p. 1080; am. 2007, ch. 314, § 8, p. 887.

**Compiler's Notes.** The 2007 amendment, by ch. 314, substituted "where a corporation's

principal office is located, or, if none in this state, Ada county" for "where a corporation's principal office, or, if none in this state, its registered office, is located" in the introductory paragraph in subsection (1).

**30-1-720. Shareholders' list for meeting.** — (1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group, and within each voting group by class or series of shares, and show the address of and number of shares held by each shareholder.

(2) The shareholders' list must be available for inspection by any shareholder, at least ten (10) days before the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, his agent or attorney is entitled on written demand to inspect and, subject to the requirements of section 30-1-1602(3), Idaho Code, to copy the list, during regular business hours and at his expense, during the period it is available for inspection.

(3) The corporation shall make the shareholders' list available at the meeting, and any shareholder, his agent, or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a shareholder, his agent or attorney to inspect the shareholders' list before or at the meeting, or copy the list as permitted by subsection (2) of this section, the Idaho district court of the county where a corporation's principal office is located, or, if none in this state, Ada county, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the

meeting for which the list was prepared until the inspection or copying is complete.

(5) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

**History.**

I.C., § 30-1-720, as added by 1997, ch. 366, § 2, p. 1080; am. 2007, ch. 314, § 9, p. 887.

**Compiler's Notes.** The 2007 amendment, by ch. 314, substituted "where a corporation's

principal office is located, or, if none in this state, Ada county" for "where a corporation's principal office, or, if none in this state, its registered office, is located" in subsection (4).

### 30-1-741. Standing.

**Lack of Standing.**

Creditor who sued his debtors' attorneys could not amend pursuant to Idaho R. Civ. P. 15(a) to assert derivative claims because he

was not a shareholder of the debtor entities and, thus, lacked standing. *Taylor v. McNichols*, 149 Idaho 826, 243 P.3d 642 (2010).

### 30-1-742. Demand.

**Cited in:** *Mannos v. Moss*, 143 Idaho 927, 155 P.3d 1166 (2007).

### 30-1-746. Payment of expenses.

**Cited in:** *Mannos v. Moss*, 143 Idaho 927, 155 P.3d 1166 (2007).

**Applicability.**

Attorney fees were properly awarded by the trial court against a creditor who brought a frivolous suit against his debtors' attorneys, and fees on appeal also were warranted there-

under because the appeal was brought spuriously and without foundation for the purpose of harassment. This section was inapplicable, however, because the district court's denial of leave to amend to assert derivative causes of action meant that the derivative claims were never before the court. *Taylor v. McNichols*, 149 Idaho 826, 243 P.3d 642 (2010).

## PART 8. DIRECTORS AND OFFICERS

**30-1-809. Removal of directors by judicial proceeding.** — (1) The Idaho district court of the county where a corporation's principal office is located, or, if none in this state, Ada county, may remove a director of the corporation from office in a proceeding commenced by or in the right of the corporation if the court finds that:

(a) The director engaged in fraudulent conduct with respect to the corporation or its shareholders, grossly abused the position of director, or intentionally inflicted harm on the corporation; and

(b) Considering the director's course of conduct and the inadequacy of other available remedies, removal would be in the best interest of the corporation.

(2) A shareholder proceeding on behalf of the corporation under subsection (1) of this section shall comply with all the requirements of sections 30-1-741 through 30-1-747, Idaho Code, except section 30-1-741(1), Idaho Code.

(3) The court, in addition to removing the director, may bar the director from reelection for a period prescribed by the court.

(4) Nothing in this section limits the equitable powers of the court to order other relief.

**History.**

I.C., § 30-1-809, as added by 1997, ch. 366, § 2, p. 1080; am. 2004, ch. 324, § 19, p. 907; am. 2007, ch. 314, § 10, p. 887.

**Compiler's Notes.** The 2007 amendment, by ch. 314, substituted "where a corporation's

principal office is located, or, if none in this state, Ada county" for "where a corporation's principal office, or, if none in this state, its registered office, is located" in the introductory paragraph in subsection (1).

**30-1-858. Variation by corporate action — Application of indemnification provisions.** — (1) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section 30-1-851, Idaho Code, or advance funds to pay for or reimburse expenses in accordance with section 30-1-853, Idaho Code. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in section 30-1-853(3), Idaho Code, and in section 30-1-855(3), Idaho Code. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with section 30-1-853, Idaho Code, to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(2) Any provision pursuant to subsection (1) of this section shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by section 30-18-206, Idaho Code, or if excluded by said section pursuant to section 30-18-110, Idaho Code, by section 30-1-1107(1)(d), Idaho Code.

(3) A corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to this part, other than the rights to mandatory indemnification under section 30-1-852, Idaho Code, and to court-ordered indemnification and advance for expenses under section 30-1-854, Idaho Code.

(4) Sections 30-1-850 through 30-1-859, Idaho Code, do not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with his appearance as a witness in a proceeding at a time when he is not a party.

(5) Sections 30-1-850 through 30-1-859, Idaho Code, do not limit a corporation's power to indemnify, advance expenses to or provide or maintain insurance on behalf of an employee or agent.

**History.**

I.C., § 30-1-858, as added by 1997, ch. 366,

§ 2, p. 1080; am. 2004, ch. 324, § 28, p. 907; am. 2007, ch. 116, § 2, p. 333.



**Compiler's Notes.** The 2007 amendment, by ch. 116, inserted "by section 30-18-206, Idaho Code, or if excluded by said section pursuant to section 30-18-110, Idaho Code" near the end of subsection (1).

Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

## PART 9. DOMESTICATION

### 30-1-901. Excluded transactions. [Repealed.]

**Compiler's Notes.** This section, which comprised I.C., § 30-1-901, as added by 2004, ch. 324, § 29, p. 907, was repealed by S.L.

2008, ch. 36, § 1, conforming Idaho law to the revised Model Entity Transactions Act.

### 30-1-902. Required approvals. [Repealed.]

**Compiler's Notes.** This section, which comprised I.C., § 30-1-902, as added by 2004, ch. 324, § 29, p. 907, was repealed by S.L.

2008, ch. 36, § 1, conforming Idaho law to the revised Model Entity Transactions Act.

### 30-1-920. Domestication. [Repealed.]

**Compiler's Notes.** This section, which comprised I.C., § 30-1-920, as added by 2004, ch. 324, § 29, p. 907, was repealed by S.L.

2008, ch. 36, § 1, conforming Idaho law to the revised Model Entity Transactions Act.

### 30-1-922. Articles of domestication. [Repealed.]

**Compiler's Notes.** This section, which comprised I.C., § 30-1-922, as added by 2004, ch. 324, § 29, p. 907, was repealed by S.L.

2008, ch. 36, § 1, conforming Idaho law to the revised Model Entity Transactions Act.

### 30-1-924. Effect of domestication. [Repealed]

**Compiler's Notes.** This section, which comprised I.C., § 30-1-924, as added by 2004, ch. 324, § 29, p. 907, was repealed by S.L.

2008, ch. 36, § 1, conforming Idaho law to the revised Model Entity Transactions Act.

## PART 10. AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

**30-1-1005. Amendment by board of directors.** — Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder approval:

- (1) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;
- (2) To delete the names and addresses of the initial directors;
- (3) To change the information required by section 30-405, Idaho Code, on its registered agent;
- (4) If the corporation has only one (1) class of shares outstanding:
  - (a) To change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or
  - (b) To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend;

(5) To change the corporate name by substituting the word “corporation,” “incorporated,” “company,” “limited,” or the abbreviation “corp.,” “inc.,” “co.,” or “ltd.,” for a similar word or abbreviation in the name, or by adding, deleting or changing a geographical attribution for the name;

(6) To reflect a reduction in authorized shares, as a result of the operation of section 30-1-631(2), Idaho Code, when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares;

(7) To delete a class of shares from the articles of incorporation, as a result of the operation of section 30-1-631(2), Idaho Code, when there are no remaining shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares; or

(8) To make any change expressly permitted by section 30-1-602(1) or (2), Idaho Code, to be made without shareholder approval.

**History.**

I.C., § 30-1-1005, as added by 1997, ch. 366, § 2, p. 1080; am. and redesign. 2004, ch. 324, § 31, p. 907; am. 2007, ch. 314, § 11, p. 887.

**Compiler’s Notes.** The 2007 amendment,

by ch. 314, rewrote subsection (3), which formerly read: “To delete the name and address of the initial registered agent or registered office, if a statement of change is on file or if an annual report has been filed with the secretary of state.”

**30-1-1022. [Amended and Redesignated.]**

**Compiler’s Notes.** This section was amended and redesignated as § 30-1-1021 by S.L. 2004, ch. 324, § 41.

**PART 11. MERGER AND SHARE EXCHANGE**

**30-1-1100. Applicability of Idaho entity transactions act. —**

(1) Unless excluded therefrom by section 30-18-110, Idaho Code, and except as provided in subsection (2) of this section, a merger or a share exchange in which a corporation is a party is governed by the Idaho entity transactions act, chapter 18, title 30, Idaho Code.

(2) Sections 30-1-1104 and 30-1-1105, Idaho Code, apply to transactions in which a corporation is a party under the Idaho entity transactions act, chapter 18, title 30, Idaho Code.

**History.**

I.C., § 30-1-1100, as added by 2007, ch. 116, § 3, p. 333.

**Compiler’s Notes.** Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

**30-1-1107. Effect of merger or share exchange. —** (1) When a merger becomes effective:

(a) The corporation or eligible entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be;

(b) The separate existence of every corporation or eligible entity that is merged into the survivor ceases;

(c) All property owned by, and every contract right possessed by, each corporation or eligible entity that merges into the survivor is vested in the survivor without reversion or impairment;

(d) All liabilities of each corporation or eligible entity that is merged into the survivor are vested in the survivor;

(e) The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(f) The articles of incorporation or organic documents of the survivor are amended to the extent provided in the plan of merger;

(g) The articles of incorporation or organic documents of a survivor that is created by the merger become effective; and

(h) The shares of each corporation that is a party to the merger, and the interests in an eligible entity that is a party to a merger, that are to be converted under the plan of merger into shares, eligible interests, obligations, rights to acquire securities, other securities, cash, other property, or any combination of the foregoing, are converted, and the former holders of such shares or eligible interests are entitled only to the rights provided to them in the plan of merger or to any rights they may have under part 13 of this chapter or the organic law of the eligible entity.

(2) When a share exchange becomes effective, the shares of each domestic corporation that are to be exchanged for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under part 13 of this chapter.

(3) A person who becomes subject to owner liability for some or all of the debts, obligations or liabilities of any entity as a result of a merger or share exchange shall have owner liability only to the extent provided in the organic law of the entity and only for those debts, obligations and liabilities that arise after the effective time of the articles of merger or share exchange.

(4) Upon merger becoming effective, a foreign corporation, or a foreign eligible entity, that is the survivor of the merger is deemed to:

(a) Agree that service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is party to the merger who exercise appraisal rights may be made in the manner provided in section 30-413, Idaho Code; and

(b) Agree that it will promptly pay the amount, if any, to which such shareholders are entitled under part 13 of this chapter.

(5) The effect of a merger or share exchange on the owner liability of a person who had owner liability for some or all of the debts, obligations or liabilities of a party to the merger or share exchange shall be as follows:

(a) The merger or share exchange does not discharge any owner liability under the organic law of the entity in which the person was a shareholder or interest holder to the extent any such owner liability arose before the effective time of the articles of merger or share exchange.

(b) The person shall not have owner liability under the organic law of the entity in which the person was a shareholder or interest holder prior to



the merger or share exchange for any debt, obligation or liability that arises after the effective time of the articles of merger or share exchange.

(c) The provisions of the organic law of any entity for which the person had owner liability before the merger or share exchange shall continue to apply to the collection or discharge of any owner liability preserved by paragraph (a) of this subsection, as if the merger or share exchange had not occurred.

(d) The person shall have whatever rights of contribution from other persons as are provided by the organic law of the entity for which the person had owner liability with respect to any owner liability preserved by paragraph (a) of this subsection, as if the merger or share exchange had not occurred.

**History.**

I.C., § 30-1-1106, as added by 1997, ch. 366, § 2, p. 1080; am. and redesign. 2004, ch. 324, § 48, p. 907; am. 2007, ch. 314, § 12, p. 887.

**Compiler's Notes.** The 2007 amendment,

by ch. 314, rewrote subsection (4)(a), which formerly read: "Appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is party to the merger who exercise appraisal rights."

PART 13. APPRAISAL RIGHTS

**30-1-1330. Court action.** — (1) If a shareholder makes demand for payment under section 30-1-1326, Idaho Code, which remains unsettled, the corporation shall commence a proceeding within sixty (60) days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty-day period, it shall pay in cash to each shareholder the amount demanded pursuant to section 30-1-1326, Idaho Code, plus interest.

(2) The corporation shall commence the proceeding in the appropriate court of the county where the corporation's principal office is located, or, if none in this state, Ada county. If the corporation is a foreign corporation, it shall commence the proceeding in the county in this state where the principal office of the domestic corporation merged with the foreign corporation was located or, if the domestic corporation did not have its principal office in this state at the time of the transaction, in Ada county.

(3) The corporation shall make all shareholders, whether or not residents of this state, whose demands remain unsettled parties to the proceeding, as in an action against their shares, and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) of this section is plenary and exclusive. The court may appoint one (1) or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them, or in any amendment to it. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

(5) Each shareholder made a party to the proceeding is entitled to judgment:

(a) For the amount, if any, by which the court finds the fair value of the shareholder's shares, plus interest, exceeds the amount paid by the corporation to the shareholder for such shares; or

(b) For the fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment under section 30-1-1325, Idaho Code.

#### **History.**

I.C., § 30-1-1330, as added by 1997, ch. 366, § 2, p. 1080; am. 2004, ch. 324, § 67, p. 907; am. 2007, ch. 314, § 13, p. 887.

**Compiler's Notes.** The 2007 amendment, by ch. 314, updated the last section reference in subsection (1); and in subsection (2), in the first sentence, substituted "where the corporation's principal office is located, or, if none in this state, Ada county" for "where the corpo-

ration's principal office, or, if none in this state, its registered office, is located," and in the last sentence, deleted "without a registered office in this state" following the first occurrence of "foreign corporation" and "or registered office" following "principal office," and inserted "or, if the domestic corporation did not have its principal office in this state" and "in Ada county."

## **PART 14. DISSOLUTION**

### **30-1-1405. Effect of dissolution.**

#### **ANALYSIS**

#### **Assets.**

Piercing the corporate veil.

#### **Assets.**

Bankruptcy debtors improperly scheduled assets of a dissolved corporation of which the debtors were the sole shareholders as assets of the debtors, since the assets remained property of the corporation after dissolution which could only be used to satisfy the debts of the corporation and, until satisfaction of such debts, title to the assets did not pass to the debtors as shareholders of the corpora-

tion. In re Young, 409 B.R. 508 (Bankr. D. Idaho 2009).

#### **Piercing the Corporate Veil.**

Where a creditor sought to establish a cause of action against debtors for nondischargeability of debt based on fraud by the manager of debtors' transmission company, although piercing the corporate veil was warranted because corporate formalities were not appropriately observed, the claim failed because the creditor's mistrust precluded justified reliance. *Fetty v. DL Carlson Enters. Inc.* (In re Carlson), 426 B.R. 840 (Bankr. D. Idaho 2010).

**30-1-1407. Other claims against dissolved corporation.** — (1) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

(2) The notice must:

(a) Be published one (1) time in a newspaper of general circulation in the county where the dissolved corporation's principal office is or was located or, if none in this state, in Ada county;

(b) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(c) State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within two (2) years after the publication of the notice.

(3) If the dissolved corporation publishes a newspaper notice in accordance with subsection (2) of this section, the claim of each of the following

claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within two (2) years after the publication date of the newspaper notice:

- (a) A claimant who was not given written notice under section 30-1-1406, Idaho Code;
- (b) A claimant whose claim was timely sent to the dissolved corporation but not acted on;
- (c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.
- (4) A claim that is not barred by section 30-1-1406(3) or 30-1-1407(3), Idaho Code, may be enforced:

- (a) Against the dissolved corporation, to the extent of its undistributed assets; or
- (b) Except as provided in section 30-1-1408(4), Idaho Code, if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

**History.**

I.C., § 30-1-1407, as added by 1997, ch. 366, § 2, p. 1080; am. 2004, ch. 324, § 73, p. 907; am. 2007, ch. 314, § 14, p. 887.

**Compiler's Notes.** The 2007 amendment, by ch. 314, substituted "corporation's princi-

pal office is or was located or, if none in this state, in Ada county" for "corporation's principal office or, if none in this state, its registered office is or was last located" in subsection (2)(a).

**30-1-1408. Court proceeding.** — (1) A dissolved corporation that has published a notice under section 30-1-1407, Idaho Code, may file an application with the district court of the county where the dissolved corporation's principal office is located, or, if none in this state, Ada county, for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under section 30-1-1407(3), Idaho Code.

(2) Within ten (10) days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(3) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

(4) Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection (1) of this section, shall satisfy the dissolved corporation's obligations with respect to claims that are



contingent, have not been made known to the dissolved corporation or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a shareholder who received assets in liquidation.

**History.**

I.C., § 30-1-1408, as added by 2004, ch. 324, § 74, p. 907; am. 2007, ch. 314, § 15, p. 887.

**Compiler's Notes.** The 2007 amendment, by ch. 314, in subsection (1), substituted "dis-

trict court" for "appropriate court" and "corporation's principal office is located or, if none in this state, Ada county" for "corporation's principal office, or, if none in this state, its registered office is last located."

### 30-1-1409. Director duties.

**Piercing the Corporate Veil.**

Where a creditor sought to establish a cause of action against debtors for nondischargeability of debt based on fraud by the manager of debtors' transmission company, although piercing the corporate veil was

warranted because corporate formalities were not appropriately observed, the claim failed because the creditor's mistrust precluded justified reliance. *Fetty v. DL Carlson Enters. Inc.* (In re Carlson), 426 B.R. 840 (Bankr. D. Idaho 2010).

**30-1-1420. Grounds for administrative dissolution.** — The secretary of state may administratively dissolve a corporation under section 30-1-1421, Idaho Code, if:

- (1) The corporation does not deliver its annual report to the secretary of state by the date on which it is due;
- (2) The corporation is without a registered agent in this state for sixty (60) days or more;
- (3) The secretary of state has credible information that the corporation has failed to notify the secretary of state within sixty (60) days after the occurrence that its registered agent has been changed or that its registered agent has resigned; or
- (4) The corporation's period of duration stated in its articles of incorporation expires.

**History.**

I.C., § 30-1-1420, as added by 1997, ch. 366, § 2, p. 1080; am. 2007, ch. 314, § 16, p. 887.

**Compiler's Notes.** The 2007 amendment,

by ch. 314, in subsections (2) and (3), deleted "or registered office" following "registered agent"; and in subsection (3), deleted "or that its registered office has been discontinued" from the end.

**30-1-1421. Procedure for and effect of administrative dissolution.** — (1) If the secretary of state determines that one (1) or more grounds exist under section 30-1-1420, Idaho Code, for dissolving a corporation, he shall give notice of his determination to the corporation by first class mail addressed to its mailing address as indicated on its most recent annual report or, if the corporation has not yet filed an annual report, to its registered agent.

(2) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty (60) days after receipt of the notice of determination, the secretary of state shall administratively dissolve the corporation by noting the fact of dissolution

and the effective date thereof in his records. The secretary of state shall give notice of the dissolution to the corporation by first class mail addressed to its mailing address as indicated on its most recent annual report or, if the corporation has not yet filed an annual report, to its registered agent.

(3) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under section 30-1-1405, Idaho Code, and notify claimants under sections 30-1-1406 and 30-1-1407, Idaho Code.

(4) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

**History.**

I.C., § 30-1-1421, as added by 1997, ch. 366, § 2, p. 1080; am. 2007, ch. 314, § 17, p. 887.

**Compiler's Notes.**

The 2007 amendment, by ch. 314, at the end of subsections (1) and (2), substituted "agent" for "office."

**30-1-1431. Procedure for judicial dissolution.** — (1) Venue for a proceeding by the attorney general to dissolve a corporation lies in Ada county. Venue for a proceeding brought by any other party named in section 30-1-1430, Idaho Code, lies in the county where a corporation's principal office is or was located or, if none in this state, in Ada county.

(2) It is not necessary to make shareholders parties to the proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(4) Within ten (10) days of the commencement of a proceeding under section 30-1-1430(2), Idaho Code, to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one (1) or more members of a national or affiliated securities association, the corporation must send to all shareholders, other than the petitioner, a notice stating that the shareholders may be entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under section 30-1-1434, Idaho Code, and accompanied by a copy of section 30-1-1434, Idaho Code.

**History.**

I.C., § 30-1-1431, as added by 1997, ch. 366, § 2, p. 1080; am. 2007, ch. 314, § 18, p. 887.

by ch. 314, substituted "corporation's principal office is or was located or, if none in this state, in Ada county" for "corporation's principal office or, if none in this state, its registered office is or was last located" in subsection (1).

**Compiler's Notes.** The 2007 amendment,

## PART 15. FOREIGN CORPORATIONS

### 30-1-1502. Consequences of transacting business without authority.

**Standing.**

Delaware corporation had standing to bring

an action seeking an easement over property because the transacting of business did not

include the ownership of real property, and there was no allegation of any other business conducted in Idaho. Capstar Radio Operating

Co. v. Lawrence, 143 Idaho 704, 152 P.3d 575 (2007).

**30-1-1503. Application for certificate of authority.** — (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

- (a) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 30-1-1506, Idaho Code;
- (b) The name of the state or country under whose law it is incorporated;
- (c) Its date of incorporation;
- (d) The street address of its principal office;
- (e) The information required by section 30-405(1), Idaho Code; and
- (f) The names and usual business addresses of its current directors and officers.

(2) The foreign corporation shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated.

**History.**

I.C., § 30-1-1503, as added by 1997, ch. 366, § 2, p. 1080; am. 2000, ch. 124, § 1, p. 291; am. 2007, ch. 314, § 19, p. 887.

**Compiler's Notes.** The 2007 amendment,

by ch. 314, rewrote subsection (1)(e), which formerly read: "The street address of its registered office in this state and the name of its registered agent at that office."

**30-1-1504. Amended certificate of authority.** — (1) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the secretary of state if it changes:

- (a) Its corporate name;
- (b) The state or country of its incorporation; or
- (c) Any of the information required by section 30-405(1), Idaho Code.

(2) The requirements of section 30-1-1503, Idaho Code, for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

**History.**

I.C., § 30-1-1504, as added by 1997, ch. 366, § 2, p. 1080; am. 2007, ch. 314, § 20, p. 887.

**Compiler's Notes.** The 2007 amendment,

by ch. 314, added subsection (1)(c).

**30-1-1507. Registered office and registered agent of foreign corporation. [Repealed.]**

**Compiler's Notes.** This section, which comprised I.C., § 30-1-1507, as added by

1997, ch. 366, § 2, p. 1080, was repealed by S.L. 2007, ch. 314, § 21. See § 30-401 et seq.



**30-1-1508. Change of registered office or registered agent of foreign corporation. [Repealed.]**

**Compiler's Notes.** This section, which comprised I.C., § 30-1-1508, as added by 1997, ch. 366, § 2, p. 1080, was repealed by S.L. 2007, ch. 314, § 21.

**30-1-1509. Resignation of registered agent of foreign corporation. [Repealed.]**

**Compiler's Notes.** This section, which comprised I.C., § 30-1-1509, as added by 1997, ch. 366, § 2, p. 1080, was repealed by S.L. 2007, ch. 314, § 21.

**30-1-1530. Grounds for revocation of certificate of authority. —** The secretary of state may commence a proceeding under section 30-1-1531, Idaho Code, to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation does not deliver its annual report to the secretary of state by the date on which it is due;

(2) The foreign corporation is without a registered agent in this state for sixty (60) days or more;

(3) The secretary of state has credible information that the foreign corporation has failed to notify the secretary of state within sixty (60) days of the occurrence that its registered agent has changed or that its registered agent has resigned;

(4) The secretary of state has credible information that an incorporator, director, officer or agent of the foreign corporation signed a document he knew was false in any material respect with intent that the document be delivered to the secretary of state for filing; or

(5) The secretary of state receives a duly authenticated certificate from the official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated, stating that it has been dissolved or disappeared as a result of a merger.

**History.**

I.C., § 30-1-1530, as added by 1997, ch. 366, § 2, p. 1080; am. 2007, ch. 314, § 22, p. 887.

**Compiler's Notes.** The 2007 amendment, by ch. 314, in subsection (2), deleted "or reg-

istered office" following "agent"; and in subsection (3), deleted "or registered office" following the first occurrence of "agent" and "or that its registered office has been discontinued" from the end.

**PART 16. RECORDS AND REPORTS**

**30-1-1604. Court-ordered inspection. —** (1) If a corporation does not allow a shareholder who complies with section 30-1-1602(1), Idaho Code, to inspect and copy any records required by that subsection to be available for inspection, the Idaho district court of the county where the corporation's principal office is located or, if none in this state, Ada county, may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(2) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with

section 30-1-1602(2) and (3), Idaho Code, may apply to the Idaho district court of the county where the corporation's principal office is located or, if none in this state, Ada county, for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

**History.**

I.C., § 30-1-1604, as added by 1997, ch. 366, § 2, p. 1080; am. 2007, ch. 314, § 23, p. 887.

**Compiler's Notes.** The 2007 amendment,

by ch. 314, in subsections (1) and (2), substituted "corporation's principal office is located or, if none in this state, Ada county" for "corporation's principal office, or, if none in this state, its registered office, is located."

**30-1-1605. Inspection of records by directors.** — (1) A director of a corporation is entitled to inspect and copy the books, records and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(2) The district court of the county where the corporation's principal office is located, or if none in this state, Ada county, may order inspection and copying of the books, records and documents at the corporation's expense, upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(3) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's costs, including reasonable counsel fees, incurred in connection with the application.

**History.**

I.C. § 30-1-1605, as added by 2004, ch. 324, § 78, p. 907; am. 2007, ch. 314, § 24, p. 887.

**Compiler's Notes.** The 2007 amendment, by ch. 314, in subsection (2), substituted "dis-

trict court" for "appropriate court" and "corporation's principal office is located, or if none in this state, Ada county" for "corporation's principal office, or if none in this state, its registered office, is located."

**30-1-1622. Annual report for secretary of state.** — (1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing an annual report on a form provided by the secretary of state that sets forth:

- (a) The name of the corporation and the state or country under whose law it is incorporated;
- (b) The information required by section 30-405, Idaho Code;
- (c) The address to which correspondence to the corporation's officers may be mailed; and
- (d) The names and business addresses of its directors and its president and secretary.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(3) The annual report shall be executed by one (1) of the persons identified in section 30-1-120, Idaho Code, or by another person who is authorized by the board of directors to execute the report. Execution of the annual report constitutes a representation that the person is authorized by the board of directors to execute the report.

(4) No annual report need be filed during the first year after a corporation is incorporated or authorized to transact business in this state. The first, and all subsequent annual reports shall be delivered to the secretary of state each year before the end of the month during which a domestic corporation was initially incorporated or a foreign corporation was initially authorized to transact business.

(5) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within thirty (30) days after the effective date of notice, it is deemed to be timely filed.

(6) Annual reports may be filed electronically by domestic or foreign corporations by following the online filing instructions provided by the secretary of state.

#### History.

I.C., § 30-1-1622, as added by 1997, ch. 366, § 2, p. 1080; am. 1998, ch. 222, § 3, p. 744; am. 1999, ch. 210, § 1, p. 562; am. 2003, ch. 207, § 1, p. 550; am. 2005, ch. 274, § 1, p. 842; am. 2007, ch. 314, § 25, p. 887.

#### Compiler's Notes.

The 2007 amendment, by ch. 314, rewrote subsection (1)(b), which formerly read: "The address of its registered office and the name of its registered agent at that office in this state."

## CHAPTER 3

### IDAHO NONPROFIT CORPORATION ACT

#### SECTION.

- 30-3-2. Filing requirements.
- 30-3-4. Filing, service and copying fees.
- 30-3-7. Filing duty of secretary of state.
- 30-3-8. Appeal from secretary of state's refusal to file document.
- 30-3-17. Articles of incorporation.
- 30-3-30. Registered office and registered agent. [Repealed.]
- 30-3-31. Change of registered office or registered agent. [Repealed.]
- 30-3-32. Resignation of registered agent. [Repealed.]

#### SECTION.

- 30-3-33. Service on corporation. [Repealed.]
- 30-3-48. Court-ordered meetings.
- 30-3-50. Notice of meeting.
- 30-3-54. Members' list for meeting.
- 30-3-90. Amendment of articles by directors.
- 30-3-100A. Applicability of Idaho entity transactions act.
- 30-3-104. Merger with foreign corporation.
- 30-3-115. Unknown claims against dissolved corporation.
- 30-3-115A. Grounds for administrative dissolution.



## SECTION.

- 30-3-115B. Procedure for and effect of administrative dissolution.
- 30-3-115C. Reinstatement following administrative dissolution.
- 30-3-118. Application of foreign corporation for certificate of authority.
- 30-3-119. Foreign corporation amended certificate of authority.
- 30-3-122. Registered office and registered agent of foreign corporation. [Repealed.]
- 30-3-123. Change of registered office or registered agent of foreign corporation. [Repealed.]

## SECTION.

- 30-3-124. Resignation of registered agent of foreign corporation. [Repealed.]
- 30-3-125. Service on foreign corporation. [Repealed.]
- 30-3-126. Withdrawal of foreign corporation.
- 30-3-127. Grounds for revocation of certificate of authority.
- 30-3-128. Procedure and effect of revocation of authority of foreign corporation.

**30-3-2. Filing requirements.** — (1) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the secretary of state.

(2) This act must require or permit filing the document in the office of the secretary of state.

(3) The document must contain the information required by this act. It may contain other information as well.

(4) The document must be typewritten or printed.

(5) The document must be in the English language. However, a corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(6) Except as otherwise permitted by section 30-3-136, Idaho Code, the document must be executed:

(a) By the presiding officer of its board of directors of a domestic or foreign corporation, its president, or by another of its officers;

(b) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) If the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary.

(7) The person executing a document shall sign it and state beneath or opposite the signature his or her name and the capacity in which he or she signs. The document may, but need not, contain:

(a) The corporate seal;

(b) An attestation by the secretary or an assistant secretary; or

(c) An acknowledgement, verification or proof.

(8) The document must be delivered to the office of the secretary of state for filing and must be accompanied by one (1) exact or conformed copy, the correct filing fee, and any penalty required by this act or other law.

**History.**

I.C., § 30-3-2, as added by 1993, ch. 220, § 2, p. 685; am. 1998, ch. 267, § 1, p. 878; am. 2007, ch. 314, § 26, p. 887.

**Compiler's Notes.**

The 2007 amendment, by ch. 314, deleted "except as provided in sections 30-3-32 and 30-3-124, Idaho Code" following "conformed copy" in subsection (8).

**30-3-4. Filing, service and copying fees.** — The secretary of state

shall collect the following fees when the documents described in these subsections are delivered for filing:

- (1) Articles of incorporation ..... \$30.00
- (2) Application for reserved name ..... \$20.00
- (3) Notice of transfer of reserved name ..... \$20.00
- (4) Application for registered name ..... \$30.00
- (5) Application for renewal of registered name ..... \$30.00
- (6) Amendment of articles of incorporation ..... \$30.00
- (7) Restatement of articles of incorporation with amendments . . \$30.00
- (8) Articles of merger ..... \$30.00
- (9) Articles of dissolution ..... \$30.00
- (10) Application for reinstatement following administrative  
dissolution ..... \$30.00
- (11) Application for certificate of authority ..... \$30.00
- (12) Application for amended certificate of authority ..... \$30.00
- (13) Application for certificate of withdrawal ..... \$20.00
- (14) Certificate of revocation of authority to transact business . . no fee
- (15) Annual report ..... no fee
- (16) Articles of correction ..... \$20.00
- (17) Certificate of existence or authorization ..... \$10.00
- (18) Any other document required or permitted to be filed by  
this act ..... \$20.00
- (19) Filing any document relating to a nonprofit corporation  
when the filing party requires the evidence of completion of filing  
to be returned within eight (8) hours, a surcharge of ..... \$20.00

**History.**  
I.C., § 30-3-4, as added by 1993, ch. 220, § 2, p. 685; am. 1998, ch. 267, § 2, p. 878; am. 1999, ch. 211, § 1, p. 563; am. 2007, ch. 314, § 27, p. 887.  
**Compiler's Notes.** The 2007 amendment, by ch. 314, deleted former subsections (6) through (8), which were the listings for the

documents "Corporation's statement of change of registered agent or registered office or both," "Agent's statement of change of registered office for each affected corporation," and "Agent's statement of resignation," respectively, and redesignated the remaining subsections accordingly.

**30-3-7. Filing duty of secretary of state.** — (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of section 30-3-2, Idaho Code, the secretary of state shall file it.

(2) The secretary of state files a document by stamping or otherwise endorsing "Filed," together with the secretary of state's official title and the date and the time of receipt, on both the original and copy of the document and on the receipt for the filing fee. After filing a document, the secretary of state shall deliver the document copy, with the filing fee receipt, (or acknowledgement of receipt if no fee is required) attached, to the domestic or foreign corporation or its representative.

(3) Upon refusing to file a document, the secretary of state shall return it to the domestic or foreign corporation or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason or reasons for the refusal.

(4) The secretary of state's duty to file documents under this section is ministerial. Filing or refusal to file a document does not:

- (a) Affect the validity or invalidity of the document in whole or in part;
- (b) Relate to the correctness or incorrectness of information contained in the document; or
- (c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

**History.**

I.C., § 30-3-7, as added by 1993, ch. 220, § 2, p. 685; am. 2007, ch. 314, § 28, p. 887.

by ch. 314, deleted "except as provided in sections 30-3-32 and 30-3-125, Idaho Code" following "After filing a document" in the last sentence in subsection (2).

**Compiler's Notes.** The 2007 amendment,

**30-3-8. Appeal from secretary of state's refusal to file document.**

— (1) If the secretary of state refuses to file a document delivered for filing to the secretary of state's office, the domestic or foreign corporation may appeal the refusal to the district court of the county where the corporation's principal office is located, or if there is none in this state, Ada county. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

(2) The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

**History.**

I.C., § 30-3-8, as added by 1993, ch. 220, § 2, p. 685; am. 2007, ch. 314, § 29, p. 887.

**Compiler's Notes.** The 2007 amendment, by ch. 314, substituted "corporation's principal

office is located, or if there is none in this state, Ada county" for "corporation's principal office, or if there is none in this state, its registered office, is or will be located" in subsection (1).

**30-3-17. Articles of incorporation.** — (1) The articles of incorporation must set forth:

- (a) A corporate name for the corporation that satisfies the requirements of section 30-3-27, Idaho Code;
- (b) The purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;
- (c) The names and addresses of the individuals who are to serve as the initial directors;
- (d) The information required by section 30-405(1), Idaho Code;
- (e) The name and address of each incorporator;
- (f) Whether or not the corporation will have members; and
- (g) Provisions not inconsistent with law regarding the distribution of assets on dissolution.

(2) The articles of incorporation may set forth:

- (a) Provisions not inconsistent with law regarding:
  - (i) Managing and regulating the affairs of the corporation;
  - (ii) Defining, limiting and regulating the powers of the corporation, its board of directors, and members or any class of members; and



(iii) The characteristics, qualifications, rights, limitations and obligations attaching to each or any class of members.

(b) Any provision that under this act is required or permitted to be set forth in the bylaws.

(3) Each incorporator named in the articles must sign the articles.

(4) The articles of incorporation need not set forth any of the corporation powers enumerated in this act.

(5) The articles of incorporation may authorize assessments to be levied upon all members or classes of membership alike, or upon the outstanding shares of stock of the corporation that issues shares of stock instead of memberships pursuant to its articles of incorporation, or in different amounts or proportions or upon a different basis upon different members or classes of membership, and may exempt some members or classes of membership from assessments. The articles of incorporation may fix the amount and method of collection of assessments, or may authorize the board of directors to fix the amount thereof, from time to time, and may make them payable at such times or intervals, and upon such notice and by such methods as the directors may prescribe. Assessments may be made enforceable by civil action or by the forfeiture of membership, or both, or by the sale of shares of the capital stock of a stockholder in a corporation that issues shares of stock instead of memberships, when authorized by the articles of incorporation of said corporation, upon notice given in writing twenty (20) days before commencement of such action or such forfeiture. If the articles of incorporation so provide, assessments may be secured by a lien upon real property to which membership rights are appurtenant, if appropriate, or upon the shares of stock of a stockholder or shareholder corporation, when authorized by its articles of incorporation.

#### **History.**

I.C., § 30-3-17, as added by 1993, ch. 220, § 2, p. 685; am. 1994, ch. 295, § 1, p. 932; am. 1997, ch. 282, § 3, p. 854; am. 2007, ch. 314, § 30, p. 887.

**Compiler's Notes.** The 2007 amendment,

by ch. 314, rewrote subsection (1)(d), which formerly read: "The street address of the corporation's initial registered office and the name of its initial registered agent at that office."

### **30-3-27. Corporate name.**

**Cited in:** Bonner County v. Bonner County Sheriff Search & Rescue, Inc., 142 Idaho 788, 134 P.3d 639 (2006).

### **30-3-30. Registered office and registered agent. [Repealed.]**

**Compiler's Notes.** This section, which comprised I.C., § 30-3-30, as added by 1993, ch. 220, § 2, p. 685, was repealed by S.L. 2007, ch. 314, § 31. See § 30-401 et seq.

### **30-3-31. Change of registered office or registered agent. [Repealed.]**

**Compiler's Notes.** This section, which comprised I.C., § 30-3-31, as added by 1993, ch. 220, § 2, p. 685, was repealed by S.L. 2007, ch. 314, § 31. See § 30-401 et seq.

### 30-3-32. Resignation of registered agent. [Repealed.]

**Compiler's Notes.** This section, which comprised I.C., § 30-3-32, as added by 1993, ch. 220, § 2, p. 685, was repealed by S.L. 2007, ch. 314, § 31. See § 30-401 et seq.

### 30-3-33. Service on corporation. [Repealed.]

**Compiler's Notes.** This section, which comprised I.C., § 30-3-33, as added by 1993, ch. 220, § 2, p. 685, was repealed by S.L. 2007, ch. 314, § 31. See § 30-401 et seq.

**30-3-48. Court-ordered meetings.** — (1) The district court of the county where a corporation's principal office is located or, if none in this state, Ada county, may summarily order a meeting to be held:

(a) On application of any member or other person entitled to participate in an annual or regular meeting, if an annual meeting was not held within the earlier of six (6) months after the end of the corporation's fiscal year or fifteen (15) months after its last annual meeting; or

(b) On application of any member or other person entitled to participate in a regular meeting, if a regular meeting is not held within forty (40) days after the date it was required to be held; or

(c) On application of a member who signed a demand for a special meeting valid under section 30-3-47, Idaho Code, a person or persons entitled to call a special meeting, if:

(i) Notice of the special meeting was not given within thirty (30) days after the date the demand was delivered to a corporate officer; or

(ii) The special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(3) If the court orders a meeting, it may also order the corporation to pay the member's costs, including reasonable attorney's fees, incurred to obtain the order.

**History.**

I.C., § 30-3-48, as added by 1993, ch. 220, § 2, p. 685; am. 2007, ch. 314, § 32, p. 887.

**Compiler's Notes.** The 2007 amendment, by ch. 314, substituted "corporation's princi-

pal office is located or, in none in this state, Ada county" for "corporation's principal office or, if none in this state, its registered office, is located" in the introductory paragraph in subsection (1).

**30-3-50. Notice of meeting.** — (1) A corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner.

(2) Any notice that conforms to the requirements of subsection (3) of this section is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered; provided however, that notice of matters referred to in subsection (3)(b) of this section must be given as provided in subsection (3) of this section.

(3) Notice is fair and reasonable if:

(a) The corporation notifies its members of the place, date, and time of each annual, regular and special meeting of members no fewer than ten (10), or if notice is mailed by other than first class or registered mail, thirty (30), nor more than sixty (60) days before the meeting date;

(b) Notice of an annual or regular meeting includes a description of any matters or matters that must be approved by the members under section 30-3-81, 30-3-88, 30-3-91, 30-3-97, 30-3-103, 30-3-107, 30-3-112, 30-18-203, 30-18-303, 30-18-403 or 30-18-503, Idaho Code; and

(c) Notice of a special meeting includes a description of the matter or matters for which the meeting is called.

(4) Unless the bylaws require otherwise, if an annual, regular or special meeting of members is adjourned to a different date, time or place, notice need not be given of the new date, time or place, if the new date, time or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 30-3-52, Idaho Code, however, notice of the adjourned meeting must be given under this section to the members of record as of the new record date.

(5) When giving notice of an annual, regular or special meeting of members, a corporation shall give notice of a matter a member intends to raise at the meeting if:

(a) Requested in writing to do so by a person entitled to call a special meeting; and

(b) The request is received by the secretary or president of the corporation at least ten (10) days before the corporation gives notice of the meeting.

**History.**

I.C., § 30-3-50, as added by 1993, ch. 220, § 2, p. 685; am. 2007, ch. 116, § 4, p. 333.

**Compiler's Notes.** The 2007 amendment, by ch. 116, inserted the last four section references in subsection (3)(b).

Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

**30-3-54. Members' list for meeting.** — (1) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting. This list shall be prepared on the same basis and be part of the list of members.

(2) The list of members must be available for inspection by any member for the purpose of communication with other members concerning the meeting, beginning two (2) business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent or attorney is entitled on written demand to inspect and,



subject to the limitations of sections 30-3-131(3) and 30-3-133, Idaho Code, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(3) The corporation shall make the list of members available at the meeting, and any member, a member's agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a member, a member's agent or attorney to inspect the list of members before or at the meeting or copy the list as permitted by subsection (2) of this section, the district court of the county where a corporation's principal office is located, or if none in this state, Ada county, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete and may order the corporation to pay the member's costs, including reasonable attorney's fees, incurred to obtain the order.

(5) Unless a written demand to inspect and copy a membership list has been made under subsection (2) of this section, prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

(6) The articles or bylaws of a religious corporation may limit or abolish the rights of a member under this section to inspect and copy any corporate record.

**History.**

I.C., § 30-3-54, as added by 1993, ch. 220, § 2, p. 685; am. 2007, ch. 314, § 33, p. 887.

**Compiler's Notes.** The 2007 amendment, by ch. 314, substituted "corporation's princi-

pal office is located, or in none in this state, Ada county" for "corporation's principal office, or if none in this state its registered office, is located" in subsection (4).

**30-3-90. Amendment of articles by directors.** — (1) Unless the articles provide otherwise, a corporation's board of directors may adopt one (1) or more amendments to the corporation's articles without member approval:

- (a) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;
- (b) To delete the names and addresses of the initial directors;
- (c) To change the information required by section 30-405(1), Idaho Code;
- (d) To change the corporate name by substituting the word "corporation," "incorporated," "company," "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," for a similar word or abbreviation in the name, or by adding, deleting or changing a geographical attribution to the name; or
- (e) To make any other change expressly permitted by this act to be made by director action.

(2) If a corporation has no members, its incorporators, until directors have been chosen, and thereafter its board of directors, may adopt one (1) or more amendments to the corporation's articles subject to any approval required pursuant to section 30-3-99, Idaho Code. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice shall be in accordance with section 30-3-76(3), Idaho Code. The

notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider a proposed amendment to the articles and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

**History.**

I.C., § 30-3-90, as added by 1993, ch. 220, § 2, p. 685; am. 2007, ch. 314, § 34, p. 887.

**Compiler's Notes.** The 2007 amendment, by ch. 314, rewrote subsection (1)(c), which

formerly read: "To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state"; and updated the first section reference in subsection (2).

**30-3-100A. Applicability of Idaho entity transactions act. —**

(1) Unless the participating entity is excluded therefrom by section 30-18-110, Idaho Code, and except as provided in subsection (2) of this section, a merger in which a nonprofit corporation is a party is governed by the Idaho entity transactions act, chapter 18, title 30, Idaho Code.

(2) Section 30-3-101, Idaho Code, applies to transactions in which a nonprofit corporation is a party under the Idaho entity transactions act, chapter 18, title 30, Idaho Code.

**History.**

I.C., § 30-3-100A, as added by 2007, ch. 116, § 5, p. 333.

**Compiler's Notes.**

Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

**30-3-104. Merger with foreign corporation. —** (1) One (1) or more foreign business or nonprofit corporations may merge with one (1) or more domestic nonprofit corporations if:

(a) The merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(b) The foreign corporation complies with section 30-3-102, Idaho Code, if it is the surviving corporation of the merger; and

(c) Each domestic nonprofit corporation complies with the applicable provisions of sections 30-3-99 and 30-3-101, Idaho Code, and, if it is the surviving corporation of the merger, with section 30-3-102, Idaho Code.

(2) Upon the merger taking effect, the surviving foreign business or nonprofit corporation may be served with process in any proceeding brought against it as provided in section 30-413, Idaho Code.

**History.**

I.C., § 30-3-104, as added by 1993, ch. 220, § 2, p. 685; am. 2007, ch. 314, § 35, p. 887.

**Compiler's Notes.** The 2007 amendment, by ch. 314, substituted "corporation may be served with process in any proceeding

brought against it as provided in section 30-413, Idaho Code" for "corporation is deemed to have irrevocably appointed the secretary of state as its agent for service of process in any proceeding brought against it" in subsection (2).

**30-3-113. Effect of dissolution.**

**Cited in:** Ward v. Portneuf Med. Ctr., Inc., 150 Idaho 501, 248 P.3d 1236 (2011).

**30-3-115. Unknown claims against dissolved corporation. —**

(1) The directors of a dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(2) The notice must:

(a) Be published one (1) time in a newspaper of general circulation in the county where the dissolved corporation's principal office is or was located, or, if none in this state, in Ada county;

(b) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(c) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five (5) years after publication of the notice.

(3) If the directors of a dissolved corporation publish a newspaper notice in accordance with subsection (2) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five (5) years after the publication date of the newspaper notice:

(a) A claimant who did not receive written notice under section 30-3-114, Idaho Code;

(b) A claimant whose claim was timely sent to the dissolved corporation but not acted on; and

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim may be enforced under this section:

(a) Against the dissolved corporation to the extent of its undistributed assets; or

(b) If the assets have been distributed in liquidation, against any person, other than a creditor of the corporation, to whom the corporation distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to such person in liquidation, whichever is less, but the distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee.

**History.**

I.C., § 30-3-115, as added by 1993, ch. 220, § 2, p. 685; am. 2007, ch. 314, § 36, p. 887.

**Compiler's Notes.** The 2007 amendment, by ch. 314, substituted "corporation's principal

office is or was located, or, if none in this state, in Ada county" for "corporation's principal office, or, if none in this state, its registered office, is or was last located" in subsection (2)(a).

**30-3-115A. Grounds for administrative dissolution. —** The secretary of state may administratively dissolve a corporation under section 30-3-115B, Idaho Code, if:

(1) The corporation does not deliver its annual report to the secretary of state by the date on which it is due;

(2) The corporation is without a registered agent in this state for sixty (60) days or more;

(3) The secretary of state has credible information that the corporation



has failed to notify the secretary of state within sixty (60) days after the occurrence that its registered agent has been changed or that its registered agent has resigned; or

(4) The corporation's period of duration stated in its articles of incorporation expires.

**History.**

I.C., § 30-3-115A, as added by 1998, ch. 267, § 5, p. 878; am. 2007, ch. 314, § 37, p. 887.

**Compiler's Notes.** The 2007 amendment, by ch. 314, in subsection (2), deleted "or reg-

istered office" following "agent"; and in subsection (3), deleted "or registered office" following the first occurrence of "agent" and "or that its registered office has been discontinued" from the end.

**30-3-115B. Procedure for and effect of administrative dissolution.** — (1) If the secretary of state determines that one (1) or more grounds exist under section 30-3-115A, Idaho Code, for dissolving a corporation, he shall give notice of his determination to the corporation by first class mail addressed to its mailing address as indicated on its most recent annual report or, if the corporation has not yet filed an annual report, to its registered agent.

(2) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty (60) days after receipt of the notice of determination, the secretary of state shall administratively dissolve the corporation by noting the fact of dissolution and the effective date thereof in his records. The secretary of state shall give notice of the dissolution to the corporation by first class mail addressed to its mailing address as indicated on its most recent annual report or, if the corporation has not yet filed an annual report, to its registered agent.

(3) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under section 30-3-113, Idaho Code, and notify claimants under sections 30-3-114 and 30-3-115, Idaho Code.

(4) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

**History.**

I.C., § 30-3-115B, as added by 1998, ch. 267, § 6, p. 878; am. 2007, ch. 314, § 38, p. 887.

**Compiler's Notes.** The 2007 amendment,

by ch. 314, substituted "agent" for "office" at the end of subsection (1).

**30-3-115C. Reinstatement following administrative dissolution.** — (1) A corporation administratively dissolved under section 30-3-115B, Idaho Code, may apply to the secretary of state for reinstatement within ten (10) years after the effective date of dissolution. The application must:

- (a) Recite the name of the corporation and the date of its incorporation;
- (b) State that the corporation applies for reinstatement;
- (c) If the corporation's name has been appropriated by another entity whose organizational documents are filed with the secretary of state, be accompanied by articles of amendment by which the corporation adopts a

new name which complies with the requirements of section 30-3-27, Idaho Code; and

(d) Be accompanied by a current annual report, appointment of registered agent pursuant to section 30-405, Idaho Code, or articles of amendment to extend the corporate existence, as appropriate to the reason for administrative dissolution.

(2) If the secretary of state determines that the application contains the information required by subsection (1) of this section and that the information is correct, he shall cancel the dissolution and prepare a certificate of reinstatement that recites the fact and effective date of the reinstatement, file a copy thereof and return the original to the corporation.

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

**History.**

I.C., § 30-3-115C, as added by 1998, ch. 267, § 7, p. 878; am. 2007, ch. 314, § 39, p. 887.

**Compiler's Notes.** The 2007 amendment, by ch. 314, in subsection (1)(c), deleted "or one

deceptively similar thereto" following "corporation's name" and "either by a consent to the use of a deceptively similar name executed by the other entity or" following "be accompanied"; and in subsection (1)(d), inserted "pursuant to section 30-405, Idaho Code."

**30-3-118. Application of foreign corporation for certificate of authority.** — (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state. The application must set forth:

- (a) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 30-3-121, Idaho Code;
- (b) The name of the state or country under whose law it is incorporated;
- (c) The date of incorporation and period of duration;
- (d) The street address of its principal office;
- (e) The name and street address of its registered agent in this state;
- (f) The names and usual business or home addresses of its current directors and officers;
- (g) Whether the foreign corporation has members.

(2) The foreign corporation shall deliver with the completed application a certificate of corporate existence or status, or a document of similar import.

**History.**

I.C., § 30-3-118, as added by 1993, ch. 220, § 2, p. 685; am. 2000, ch. 124, § 2, p. 291; am. 2007, ch. 314, § 40, p. 887.

**Compiler's Notes.** The 2007 amendment,

by ch. 314, rewrote subsection (1)(e), which formerly read: "The street address of its registered office in this state and the name of its registered agent at that office."

**30-3-119. Foreign corporation amended certificate of authority.** — (1) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the secretary of state if it changes:

- (a) Its corporate name;

- (b) The period of its duration;
- (c) Any of the information required by section 30-405, Idaho Code; or
- (d) The state or country of its incorporation.

(2) The requirements of section 30-3-119, Idaho Code, for obtaining an original certificate of authority apply to obtaining an amended certificate under this section and the corporation shall deliver with the application a certificate evidencing the change duly authenticated by the secretary of state or other official having custody or corporate records in the state or country under whose law it is incorporated.

**History.**

I.C., § 30-3-119, as added by 1993, ch. 220, § 2, p. 685; am. 2007, ch. 314, § 41, p. 887.

**Compiler's Notes.** The 2007 amendment, by ch. 314, added subsection (1)(c) and redesignated former subsection (1)(c) as (1)(d).

**30-3-122. Registered office and registered agent of foreign corporation. [Repealed.]**

**Compiler's Notes.** This section, which comprised I.C., § 30-3-122, as added by 1993, ch. 220, § 2, p. 685, was repealed by S.L. 2007, ch. 314, § 42. See § 30-401 et seq.

**30-3-123. Change of registered office or registered agent of foreign corporation. [Repealed.]**

**Compiler's Notes.** This section, which comprised I.C., § 30-3-123, as added by 1993, ch. 220, § 2, p. 685, was repealed by S.L. 2007, ch. 314, § 42. See § 30-401 et seq.

**30-3-124. Resignation of registered agent of foreign corporation. [Repealed.]**

**Compiler's Notes.** This section, which comprised I.C., § 30-3-124, as added by 1993, ch. 220, § 2, p. 685, was repealed by S.L. 2007, ch. 314, § 42. See § 30-401 et seq.

**30-3-125. Service on foreign corporation. [Repealed.]**

**Compiler's Notes.** This section, which comprised I.C., § 30-3-125, as added by 1993, ch. 220, § 2, p. 685, was repealed by S.L. 2007, ch. 314, § 42. See § 30-401 et seq.

**30-3-126. Withdrawal of foreign corporation.** — (1) A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

- (a) The name of the corporation and the state or country under the laws of which it is incorporated;
- (b) That the corporation is not transacting business in this state;
- (c) That the corporation surrenders its authority to transact business in this state;
- (d) That the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising in



this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereon;

(e) A post-office address to which a copy of any process against the corporation may be served on it; and

(f) Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine and assess any unpaid fees payable by such foreign corporation as in this act prescribed.

The application for withdrawal shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one (1) of the officers signing the application, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him.

(2) Duplicate originals of such application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of this act, he shall, when all fees have been paid as in this act prescribed:

(a) Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof.

(b) File one (1) of such duplicate originals in his office.

(c) Issue a certificate of withdrawal to which he shall affix the other duplicate original.

The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in this state shall cease.

**History.**

I.C., § 30-3-126, as added by 1993, ch. 220, § 2, p. 685; am. 2007, ch. 314, § 43, p. 887.

**Compiler's Notes.** The 2007 amendment, by ch. 314, in subsection (1)(d), deleted "in the

manner provided in section 30-3-125, Idaho Code" from the end; and in subsection (1)(e), deleted "pursuant to the provisions of section 30-3-125, Idaho Code" from the end.

**30-3-127. Grounds for revocation of certificate of authority. —**

The secretary of state may commence a proceeding under section 30-3-128, Idaho Code, to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation does not deliver its annual report to the secretary of state by the date on which it is due;

(2) The foreign corporation is without a registered agent in this state for sixty (60) days or more;

(3) The secretary of state has credible information that the foreign corporation has failed to notify the secretary of state by an appropriate filing within sixty (60) days of the occurrence that its registered agent has changed or that its registered agent has resigned;

(4) The secretary of state has credible information that an incorporator, director, officer or agent of the foreign corporation signed a document he

knew was false in any material respect with intent that the document be delivered to the secretary of state for filing; or

(5) The secretary of state receives a duly authenticated certificate from the official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated, stating that it has been dissolved or has disappeared as a result of a merger.

**History.**

I.C., § 30-3-127, as added by 1998, ch. 267, § 10, p. 878; am. 2007, ch. 314, § 44, p. 887.

**Compiler's Notes.** The 2007 amendment, by ch. 314, in subsection (2), deleted "or registered office" following "agent"; and in sub-

section (3), inserted "by an appropriate filing," and deleted "or registered office" following the first occurrence of "agent" and "or that its registered office has been discontinued" from the end.

**30-3-128. Procedure and effect of revocation of authority of foreign corporation.** — (1) If the secretary of state determines that one

(1) or more grounds exist under section 30-3-127, Idaho Code, for revocation of a certificate of authority, he shall give notice of his determination to the foreign corporation by first class mail addressed to its mailing address as indicated on its most recent annual report or, if the foreign corporation has not yet filed an annual report, to its registered office.

(2) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground for revocation determined by the secretary of state does not exist within sixty (60) days after receipt of the notice of determination, the secretary of state may revoke the foreign corporation's certificate of authority by noting the fact of revocation and the effective date thereof in his records. The secretary of state shall give notice of the revocation to the foreign corporation by first class mail addressed to its mailing address as indicated on its most recent annual report, or if the foreign corporation has not yet filed an annual report, to its registered office.

(3) The authority of a foreign corporation to transact business in this state ceases on the date shown on the notice of revocation of its certificate of authority.

(4) Service of process on a foreign corporation whose certificate of authority has been revoked may be made upon its registered agent, if any.

(5) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

**History.**

I.C., § 30-3-128, as added by 1993, ch. 220, § 2, p. 685; am. 1998, ch. 267, § 11, p. 878; am. 2007, ch. 314, § 45, p. 887.

**Compiler's Notes.** The 2007 amendment, by ch. 314, deleted "or pursuant to section 30-3-125" from the end in subsection (4).

## CHAPTER 4

### IDAHO REGISTERED AGENTS ACT

**SECTION.**

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30-402. Definitions.

30-403. Fees.

**SECTION.**

30-404. Addresses in filings.

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- agent.
- 30-407. Termination of listing of commercial registered agent.
- 30-408. Change of registered agent by entity.
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- 30-412. Appointment of agent by nonfiling or nonqualified foreign entity.
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## OFFICIAL COMMENT

## PREFATORY NOTE

The Model Registered Agents Act (the "Act") is one of several projects undertaken by the Conference and the American Bar Association ("ABA") to integrate state entity laws into a more coherent and rational scheme. Other projects include the development of the Model Entity Transactions Act jointly by the Conference and the ABA and the addition of Chapter 9 to the Model Business Corporation Act by the Committee on Corporate Laws of the ABA Section on Business Law.

The Act grew out of discussions within the International Association of Commercial Administrators ("IACA"), which is the association of state corporation bureaus and similar filing offices in the United States and Canada. IACA was approached by representatives of corporation service companies who were seeking to solve problems they have encountered in their provision of registered agent services. IACA had also been considering on its own how filing requirements in state corporation bureaus could be simplified and standardized. IACA decided that the time was right for it to develop proposed statutory provisions on two subjects:

1. A standard set of provisions that would apply to all forms of entities that are required to designate in a public filing an agent for service of process.
2. A standard form of annual report to be filed with secretaries of state by all forms of entities.

The Ad Hoc Committee on Entity Rationalization of the ABA Section on Business Law (the "ABA Committee") had been working cooperatively with IACA for several years on other projects of mutual interest. After IACA had prepared a first draft of provisions on registered agents and annual reports, the ABA Committee joined the drafting effort. The ABA Committee also approached the leadership of the Conference with the suggestion that the Conference also join the drafting

effort. The result was the development of the Act.

The original draft of the Act contained separate articles dealing with the two subjects originally identified by IACA: (i) registered agents and (ii) annual report filings. After detailed consideration, the drafting committee and its advisors were all agreed that a separate article on annual reports was not necessary and should be omitted from the Act. Instead, the changes needed to standardize annual report filings are included in the Appendix of conforming amendments to the Act. Thus, the Act has two parts:

1. The provisions of the Act itself, which deal with registered agent issues and apply to all forms of entities.
2. An Appendix of conforming changes to all of the existing uniform, model, and prototype entity laws that have two separate purposes:
  - some of the conforming amendments integrate the uniform, model, and prototype entity laws with the Act and its new registered agent provisions, and
  - the remaining conforming amendments standardize the provisions of the uniform, model, and prototype entity laws on annual report filings.

Under existing uniform, model, and prototype entity laws, an entity's registered agent and the location of the registered agent's office serve three purposes:

1. the registered agent is an agent of the entity authorized to receive service of process on behalf of the entity;
2. the location of the office of the registered agent determines where venue is to be laid in certain actions under the entity's organic law; and
3. the location of the office of the registered agent also determines where certain notices required by the entity's organic law are to be published.

The first function, that of being an agent for service of process, is the principal reason why



the appointment of a registered agent is required under entity organic laws. The remaining two functions made sense at a time when the registered office address of an entity was often a business address for the entity. In recent years, however, it has become common for entities to use as their registered agents businesses whose principal activity is the provision of registered agent services, and thus the address of the registered agent has become divorced from any real connection with the business activities of the represented entity.

The conforming amendments in the Appendix to this Act accordingly eliminate the func-

tions of the registered office address as the means of determining where venue or publication is appropriate. Venue and publication will be determined by the location of an entity's principal office; or, if the principal office is outside the state, venue and publication will be in a county specified by the legislature (for example, the county where the state capitol is located).

The conforming amendments also eliminate the provisions found in some entity organic laws that make the Secretary of State the default agent for service of process under certain circumstances.

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**30-401. Short title.** — This chapter shall be known and may be cited as the “Idaho Registered Agents Act.”

**History.**

I.C., § 30-401, as added by 2007, ch. 314,  
§ 1, p. 887.

**30-402. Definitions.** — As used in this chapter:

(1) “Appointment of agent” means a statement appointing an agent for service of process filed by:

(a) A domestic or foreign unincorporated nonprofit association under section 53-710, Idaho Code; or

(b) A domestic entity that is not a filing entity or a nonqualified foreign entity under section 30-412, Idaho Code.

(2) “Commercial registered agent” means an individual or a domestic or foreign entity listed under section 30-406, Idaho Code.

(3) “Domestic entity” means an entity whose internal affairs are governed by the law of this state.

(4) “Entity” means a person that has a separate legal existence or has the power to acquire an interest in real property in its own name other than:

(a) An individual;

(b) A testamentary, inter vivos, or charitable trust, with the exception of a business trust, statutory trust, or similar trust;

(c) An association or relationship that is not a partnership by reason of section 53-3-202(c), Idaho Code, or a similar provision of the law of any other jurisdiction;

(d) A decedent's estate; or

(e) A public corporation, government or governmental subdivision, agency, or instrumentality, or quasi-governmental instrumentality.

(5) “Filing entity” means an entity that is created by the filing of a public organic document.

(6) “Foreign entity” means an entity other than a domestic entity.

(7) “Foreign qualification document” means an application for a certificate of authority or other foreign qualification filing with the secretary of state by a foreign entity.

(8) “Governance interest” means the right under the organic law or

organic rules of an entity, other than as a governor, agent, assignee, or proxy, to:

(a) Receive or demand access to information concerning, or the books and records of, the entity;

(b) Vote for the election of the governors of the entity; or

(c) Receive notice of or vote on any or all issues involving the internal affairs of the entity.

(9) “Governor” means a person by or under whose authority the powers of an entity are exercised and under whose direction the business and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(10) “Interest” means:

(a) A governance interest in an unincorporated entity;

(b) A transferable interest in an unincorporated entity; or

(c) A share or membership in a corporation.

(11) “Interest holder” means a direct holder of an interest.

(12) “Jurisdiction of organization,” with respect to an entity, means the jurisdiction whose law includes the organic law of the entity.

(13) “Noncommercial registered agent” means a person that is not listed as a commercial registered agent under section 30-406, Idaho Code, and that is:

(a) An individual or a domestic or foreign entity that serves in this state as the agent for service of process of an entity; or

(b) The individual who holds the office or other position in an entity that is designated as the agent for service of process pursuant to section 3-405(1)(b)(ii), Idaho Code.

(14) “Nonqualified foreign entity” means a foreign entity that is not authorized to transact business in this state pursuant to a filing with the secretary of state.

(15) “Nonresident LLP statement” means:

(a) A statement of qualification of a domestic limited liability partnership that does not have an office in this state; or

(b) A statement of foreign qualification of a foreign limited liability partnership that does not have an office in this state.

(16) “Organic law” means the statutes, if any, other than this chapter, governing the internal affairs of an entity.

(17) “Organic rules” means the public organic document and private organic rules of an entity.

(18) “Person” means an individual, corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(19) “Private organic rules” means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders, and are not part of its public organic document, if any.

(20) “Public organic document” means the public record, the filing of which creates an entity, and any amendment to or restatement of that record.

(21) “Qualified foreign entity” means a foreign entity that is authorized to transact business in this state pursuant to a filing with the secretary of state.

(22) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) “Registered agent” means a commercial registered agent or a non-commercial registered agent.

(24) “Registered agent filing” means:

- (a) The public organic document of a domestic filing entity;
- (b) A nonresident LLP statement;
- (c) A foreign qualification document; or
- (d) An appointment of agent.

(25) “Represented entity” means:

- (a) A domestic filing entity;
- (b) A domestic or qualified foreign limited liability partnership that does not have an office in this state;
- (c) A qualified foreign entity;
- (d) A domestic or foreign unincorporated nonprofit association for which an appointment of agent has been filed;
- (e) A domestic entity that is not a filing entity for which an appointment of agent has been filed; or
- (f) A nonqualified foreign entity for which an appointment of agent has been filed.

(26) “Sign” means, with present intent to authenticate or adopt a record:

- (a) To execute or adopt a tangible symbol; or
- (b) To attach to or logically associate with the record an electronic sound, symbol, or process.

(27) “Transferable interest” means the right under an entity’s organic law to receive distributions from the entity.

(28) “Type,” with respect to an entity, means a generic form of entity:

- (a) Recognized at common law; or
- (b) Organized under an organic law, whether or not some entities organized under that organic law are subject to provisions of that law that create different categories of the form of entity.

#### **History.**

I.C., § 30-402, as added by 2007, ch. 314,  
§ 1, p. 887.

### **OFFICIAL COMMENT**

**In general.** Many of the definitions in this section were developed for use in the Model Entity Transactions Act (META). States that have adopted META should consider arranging their entity laws in such a manner that the definitions in META will apply more broadly and do not need to be repeated in other laws. The definitions that are common to this Act and META are:

“domestic entity”

“entity”  
“filing entity”  
“foreign entity”  
“governance interest”  
“governor”  
“interest”  
“interest holder”  
“jurisdiction of organization”  
“organic law”  
“organic rules”



“person”  
 “private organic rules”  
 “public organic document”  
 “qualified foreign entity”  
 “record”  
 “sign”  
 “transferable interest”  
 “type”

The comments below with respect to defined terms taken from META are substantively the same as the corresponding comments in META.

**“Appointment of agent.” [(1)]** — An appointment of agent is an optional filing that may be made by an entity that does not otherwise make a public filing in the state naming an agent for service of process. If a state has not enacted the Uniform Unincorporated Nonprofit Association Act, paragraph (A) [(a)] of this definition should be omitted.

**“Commercial registered agent.” [(2)]** — A commercial registered agent is an individual or entity that is in the business of serving as a registered agent in the state and that files a listing statement under Section 6 [§ 30-406]. Being listed as a commercial registered agent is voluntary and persons serving as registered agents are not required to be listed under Section 6 [§ 30-406]. The benefits to the registered agent of being listed under Section 6 [§ 30-406], however, are substantial and most registered agents will elect to be so listed. Although this definition and Section 6 [§ 30-406] do not expressly require that a foreign entity that is listed as a commercial registered agent be qualified to do business in the state, the activity of serving as a registered agent is one that requires such registration.

**“Domestic entity.” [(3)]** — The term “domestic entity” in this Act means an entity whose internal affairs are governed by the organic laws of the adopting state. Except in the case of general partnerships and unincorporated nonprofit associations, this will mean an entity that is formed, organized, or incorporated under domestic law. In the case of a general partnership organized under the Uniform Partnership Act (1997) (RUPA), it will mean a general partnership whose governing law under RUPA § 106 is the law of the adopting state. Under RUPA § 106 the governing law is determined by the location of the partnership’s chief executive office, except for limited liability partnerships where the governing law is the state where the statement of qualification is filed. It is a factual question whether the activities and organization of an unincorporated nonprofit association make it a domestic or foreign entity.

This definition is patterned after Model Entity Transactions Act § 102(9) (“domestic entity”).

**“Entity.” [(4)]** — The term “entity” includes:

- Business corporation.
- Business or statutory trust.
- General partnership, whether or not a limited liability partnership.
- Limited liability company.
- Limited partnership, whether or not a limited liability limited partnership.
- Nonprofit corporation.
- Unincorporated nonprofit association.

The term does not include a sole proprietorship.

This definition is intended to include all forms of private organizations, regardless of whether organized for profit, and artificial legal persons other than those excluded by paragraphs (A) [(a)] through (E) [(e)]. Thus, this definition is broader than the definition of “business entity” in, e.g., Code of Ala. § 10-15-2(2) which does not include nonprofit entities. This definition does not exclude regulated entities such as public utilities, banks and insurance companies.

Inter vivos and testamentary trusts are treated in many states as having a separate legal existence, but they have been excluded from the definition of “entity.” Trusts that carry on a business, however, such as a Massachusetts trust, real estate investment trust, Illinois land trust, or other common law or statutory business trusts are “entities.”

Section 4 of the Uniform Unincorporated Nonprofit Association Act gives an unincorporated nonprofit association the power to acquire an estate in real property and thus an unincorporated nonprofit association organized in a state that has adopted that act will be an “entity.” At common law, an unincorporated nonprofit association was not a legal entity and did not have the power to acquire real property. Most states that have not adopted the Uniform Act have nonetheless modified the common law rule, but states that have not adopted the Uniform Act should analyze whether they should modify the definition of “entity” to add an express reference to unincorporated nonprofit associations.

There is some question as to whether a partnership subject to the Uniform Partnership Act (1914) (UPA) is an entity or merely an aggregation of its partners. That question has been resolved by Section 201 of the Uniform Partnership Act (1997) (RUPA), which makes clear that a general partnership is an entity with its own separate legal existence. Section 8 of UPA gives partnerships subject to it the power to acquire estates in real property and thus such a partnership will be an “entity.” As a result, all general partnerships will be “entities” regardless of whether the state in which they are organized has adopted RUPA.

Paragraph (C) [(c)] of this definition excludes from the concept of an "entity" any form of co-ownership of property or sharing of returns from property that is not a partnership under RUPA. In that connection, Section 202(c) of RUPA provides in part:

In determining whether a partnership is formed, the following rules apply:

(1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

Limited liability partnerships and limited liability limited partnerships are "entities" because they are general partnerships and limited partnerships, respectively, that have made the additional required election claiming LLP or LLLP status. A limited liability partnership is not, therefore, a separate type of entity from the underlying general or limited partnership that has elected limited liability partnership status.

This definition is patterned after Model Entity Transactions Act § 102(13) ("entity").

**"Filing entity."** [(5)] — Whether an entity is a filing entity is determined by reference to whether its legal existence is attributable to the filing of a document with the state filing officer. While the statute refers to an entity that is "created," it is intended to encompass corporations which are "incorporated," limited liability companies which are "organized," and limited partnerships which are "formed" by a filing required by the organic law governing the entity. Business trusts (sometimes referred to as "statutory trusts") present a special problem. In some states, for example, a business trust is a filing entity, while in other states business trusts are recognized only by common law.

The term does not include a limited liability partnership because an election filed by a general partnership claiming that status (*e.g.*, a statement of qualification under Uniform Partnership Act (1997), § 1001) does not create the entity. A limited liability limited partnership, on the other hand, is a filing entity because the underlying limited partnership is created by filing a certificate of limited partnership.

This definition is patterned after Model Entity Transactions Act § 102(14) ("filing entity"). See also Model Business Corporation Act § 1.40(9B) ("filing entity").

**"Foreign entity."** [(6)] — The term "foreign entity" includes any non-domestic entity of any type. Where a foreign entity is a filing entity, the entity is governed by the laws of

the state of filing. A nonfiling foreign entity is governed by the laws of the state governing its internal affairs. It is a factual question whether a general partnership whose internal affairs are governed by the Uniform Partnership Act (1914) (UPA) is a domestic or foreign partnership. A UPA partnership will likely be deemed to be a domestic entity where the greatest nexus of contacts are found. Similar issues arise with respect to determining the domestic or foreign status of unincorporated nonprofit associations. The domestic or foreign characterization of partnerships under the Uniform Partnership Act (1997) (RUPA) that have not registered as limited liability partnerships will be governed by RUPA § 106(a) ("state where the partnership's chief executive office is located").

This definition is patterned after Model Entity Transactions Act § 102(15) ("foreign entity").

**"Foreign qualification document."** [(7)] — This definition should be construed broadly to include filings in the state that are required when a foreign entity is conducting activities in the state, regardless of whether the process is referred to as "obtaining a certificate of authority to do business," "qualifying to do business," "being authorized to transact business," or some other formulation.

**"Governance interest."** [(8)] — A governance interest is typically only part of the interest that a person will hold in an entity and is usually coupled with a transferable interest (or economic rights). However, memberships in some nonprofit corporations and unincorporated nonprofit associations consist solely of governance interests and memberships in other nonprofit entities may not include either governance interests or transferable interests. In some unincorporated business entities, there is a more limited right to transfer governance interests than there is to transfer transferable interests. An interest holder in such an unincorporated business entity who transfers only a transferable interest and retains the governance interest will also retain the status of an interest holder. Whether a transferee who acquires only a transferable interest will acquire the status of an interest holder is determined by the definition of "interest holder."

Shares in a business corporation that are nonvoting nonetheless have a governance interest because they entitle the holder to certain rights of access to information and to certain statutory voting rights on amendments of the articles of incorporation.

Governors of an entity have the kinds of rights listed in the definition of "governance interest" by reason of their position with the entity. For a governor to have a "governance interest," however, requires that the governor also have those rights for a reason other than



the governor's status as such. A manager who is not a member in a limited liability company, for example, will not have a governance interest, but a manager who is a member will have a governance interest arising from the ownership of a membership interest.

This definition is patterned after Model Entity Transactions Act § 102(16) ("governance interest").

**"Governor."** [(9)] — This term has been chosen to provide a way of referring to a person who has the authority under an entity's organic law to make management decisions regarding the entity that is different from any of the existing terms used in connection with particular types of entities. *Compare* Colo. § 7-90-102(35.7) which uses the term "manager" to refer to this concept, even though "manager" is also a term of art in connection with limited liability companies. Depending on the type of entity or its organic rules, the governors of an entity may have the power to act on their own authority, or they may be organized as a board or similar group and only have the power to act collectively, and then only through a designated agent. In other words, a person having only the power to bind the organization pursuant to the instruction of the governors is not a governor. Under the organic rules, particularly those of unincorporated entities, most or all of the management decisions may be reserved to the members or partners. Thus, if a manager of a limited liability company were limited to having authority to execute management decisions made by the members and did not have any authority to make independent management decisions, the manager would not be a governor under this definition.

Except as described above, the term "governor" includes:

- Director of a business corporation.
- Director or trustee of a nonprofit corporation.
- General partner of a general partnership.
- General partner of a limited partnership.
- Manager of a limited liability company.
- Member of a member-managed limited liability company.
- Trustee of a business or statutory trust.

This definition is patterned after Model Entity Transactions Act § 102(17) ("governor").

**"Interest."** [(10)] — In the usual case, the interest held by an interest holder will include both a governance interest and a transferable interest (or economic rights). Members in many nonprofit corporations or unincorporated nonprofit associations do not have a transferable interest because they do not receive distributions, but they nonetheless may hold a governance interest in which case they would have the status of interest

holders under the Act. An interest holder in an unincorporated business entity may transfer all or part of the interest holder's transferable interest without the transferee acquiring the governance interest of the transferor. In that case, whether the transferor will retain the status of an interest holder will be determined by the applicable organic law and the transferee will have the status of an interest holder under paragraph (B) [(b)] of this definition. That paragraph will also apply to subsequent transferees from the original transferee.

The term "interest" includes:

- Beneficial interest in a business or statutory trust.
- Membership in a nonprofit corporation.
- Membership in an unincorporated nonprofit association.
- Membership interest in a limited liability company.
- Partnership interest in a general partnership.
- Partnership interest in a limited partnership.
- Shares in a business corporation.

This definition is patterned after Model Entity Transactions Act § 102(18) ("interest").

**"Interest holder."** [(11)] — This Act does not refer to "equity" interests or "equity" owners or holders because the term "equity" could be confusing in the case of a nonprofit entity whose members do not have an interest in the assets or results of operations of the entity but only have a right to vote on its internal affairs. *Compare* Code of Ala. § 10-15-2(4) ("equity owner").

The term "interest holder" includes:

- Beneficiary of a business or statutory trust.
- General partner of a general partnership.
- General partner of a limited partnership.
- Limited partner of a limited partnership.
- Member of a limited liability company.
- Member of a nonprofit corporation.
- Member of an unincorporated nonprofit association.
- Shareholder of a business corporation.

This definition is patterned after Model Entity Transactions Act § 102(20) ("interest holder"). See also Model Business Corporation Act § 1.40(13B) ("interest holder").

**"Jurisdiction of organization."** [(12)] — The term "jurisdiction of organization" refers to the jurisdiction whose laws include the organic law of the entity.

This definition is patterned after Model Entity Transactions Act § 102(22) ("jurisdiction of organization").

**"Noncommercial registered agent."** [(13)] — A noncommercial registered agent is a person that serves as an agent for service of



process but that is not listed under Section 6 [§ 30-406]. All agents for service of process that are not commercial registered agents are noncommercial registered agents.

**“Nonqualified foreign entity.” [(14)]** — A nonqualified foreign entity is a foreign entity for which there is no foreign qualification document in effect in the adopting state.

**“Nonresident LLP statement.” [(15)]** — A nonresident LLP statement is the filing that is made by a limited liability partnership under Section 1001 of the Uniform Partnership Act (1997).

**“Organic law.” [(16)]** — Organic law means statutes other than this Act that govern the internal affairs of an entity. Entity laws in a few states purport to require that some of their internal governance rules applicable to a domestic entity also apply to a foreign entity with significant ties to the state. *See, e.g.*, Cal. Gen. Corp. Law § 2115, N.Y. N-PCL §§ 1318-1321, 15 Pa.C.S. § 6145. Such a “sticky fingers” law is included within the definition of “organic law” for purposes of the Act.

If a state has adopted the Model Entity Transactions Act, it should amend this definition to also exclude that act from the term “organic law.”

This definition is patterned after Model Entity Transactions Act § 102(26) (“organic law”). See also Model Business Corporation Act § 1.40(15B) (“organic law”).

**“Organic rules.” [(17)]** — The term “organic rules” means an entity’s public organic document and its private organic rules.

This definition is patterned after Model Entity Transactions Act § 102(27) (“organic rules”).

**“Person.” [(18)]** — The term “person” has the standard meaning of that term in uniform acts.

**“Private organic rules.” [(19)]** — The term private “organic rules” is intended to include all governing rules of an entity that are binding on all of its interest holders, whether or not in written form, except for the provisions of the entity’s public organic document, if any. The term is intended to include agreements in “record” form as well as oral partnership agreements and oral operating agreements among LLC members. Where private organic rules have been amended or restated, the term means the private organic rules as last amended or restated.

The term “private organic rules” includes:

- Bylaws of a business corporation.
- Bylaws of a business or statutory trust.
- Bylaws of a nonprofit corporation.
- Constitution and bylaws of an unincorporated nonprofit association.
- Operating agreement of a limited liability company.

- Partnership agreement of a general partnership.

- Partnership agreement of a limited partnership.

This definition is patterned after Model Entity Transactions Act § 102(30) (“private organic rules”). Compare Model Business Corporation Act § 1.40(17A) (“private organic document”).

**“Public organic document.” [(20)]** — A “public organic document” is a document that is filed of public record to form, organize, incorporate, or otherwise create an entity. The term does not include a statement of partnership authority filed under Section 303 of the Uniform Partnership Act (1997) or any of the other statements that may be filed under that act since those statements do not create a new entity. A limited liability partnership is the same entity as the partnership that files the statement. For the same reason, the term also does not include a statement of qualification filed under Section 1001 of that act to become a limited liability partnership. Similarly, the term does not include a statement of authority filed under Section 5 of the Uniform Unincorporated Nonprofit Association Act or a statement appointing an agent filed under Section 10 of that act. Where a public organic document has been amended or restated, the term means the public organic document as last amended or restated.

The term “public organic document” includes:

- Articles of incorporation of a business corporation.
- Articles of incorporation of a nonprofit corporation.
- Certificate of limited partnership.
- Certificate of organization of a limited liability company.

In those states where a deed of trust or other instrument is publicly filed to create a business trust, that filing will constitute a public organic document. But in those states where a business trust is not created by a public filing, the deed of trust or similar document will be part of the private organic rules of the business trust.

This definition is patterned after Model Entity Transactions Act § 102(32) (“public organic document”).

**“Qualified foreign entity.” [(21)]** — A qualified foreign entity is a foreign entity for which there is a foreign qualification document in effect in the adopting state.

This definition is patterned after Model Entity Transactions Act § 102(33) (“qualified foreign entity”).

**“Record.” [(22)]** — The term “record” has the standard meaning of that term in uniform acts.

**“Registered agent.” [(23)]** — This term is used in the Act to refer to agents for service of

process in contexts where it is not necessary to differentiate between commercial registered agents and noncommercial registered agents.

**“Registered agent filing.” [(24)]** — Some states require that filings in addition to those listed in this definition, such as articles of amendment or articles of merger, state the registered agent information of the entity making the filing. In states where that is the case, this definition should be amended to add the following additional provision:

“(E) any other filing with the [Secretary of State] under an entity’s organic law that must include the information required by Section 5(a).”

**“Represented entity.” [(25)]** — This definition lists the various classes of entities for which registered agents act as agents for service of process.

**“Sign.” [(26)]** — The term “sign” has the standard meaning of that term in uniform acts.

**30-403. Fees.** — (1) The secretary of state shall collect the following fees when a filing is made under this chapter:

- (a) Commercial registered agent listing statement ..... \$100.00
- (b) Commercial registered agent termination statement ..... \$20.00
- (c) Statement of change ..... \$20.00
- (d) Statement of resignation ..... no fee
- (e) Statement appointing an agent for service of process ..... \$20.00

(2) The secretary of state shall collect the following fees for copying and certifying a copy of any document filed under this chapter:

- (a) Twenty-five cents (25¢) per page for copying; and
- (b) Twenty dollars (\$20.00) for a certificate.

**History.**  
I.C., § 30-403, as added by 2007, ch. 314, § 1, p. 887.

OFFICIAL COMMENT

Subsection (a) [(1)] establishes the filing fees for each type of document that may be filed under the Act. The dollar amounts for each filing should be inserted by the adopting state with reference to the filing fees charged for other filings with the Secretary of State.

Subsection (a)(4) [(1)(d)] provides that a fee is not required in connection with a filing of a statement of resignation. That permits a person who is named as a registered agent without the person’s consent, or who agrees to serve as registered agent for a fee and the fee

**“Transferable interest.” [(27)]** — The term “transferable interest” is taken from Section 102(22) of the Uniform Limited Partnership Act (2001).

This definition is patterned after Model Entity Transactions Act § 102(38) (“transferable interest”).

**“Type.” [(28)]** — The term “type” has been developed in an attempt to distinguish different legal forms of entities. It is sometimes difficult to decide whether one is dealing with a different form of entity or a variation of the same form. For example, a limited partnership, although it has been defined as a partnership, is a different type of entity from a general partnership, while a limited liability partnership is not a different type of entity from a general partnership. In some states cooperative corporations are categories of business corporations or nonprofit corporations, while in other states cooperatives are a separate type of entity.

This definition is patterned after Model Entity Transactions Act § 102(39) (“type”).

is not paid, to reflect properly the status of the person in the records of the Secretary of State without expense.

Subsection (b) [(2)] establishes fees for copying and certifying documents filed under the Act. The dollar amounts for these fees should be inserted by the adopting state with reference to the fees charged for those services under the state’s various entity organic laws.

This section is patterned after Section 1.22 of the Model Business Corporation Act.

**30-404. Addresses in filings.** — Whenever a provision of this chapter

other than section 30-411(1)(d), Idaho Code, requires that a filing state an address, the filing must state:

- (1) An actual street address or rural route box number in this state; and
- (2) A mailing address in this state, if different from the address under subsection (1) of this section.

**History.**

I.C., § 30-404, as added by 2007, ch. 314,  
§ 1, p. 887.

**OFFICIAL COMMENT**

When this Act requires that a filing state an address, the address used must always be a geographic location. Where a person uses a

post office box as its mailing address, paragraph (2) requires that the post office box address also be stated.

**30-405. Appointment of registered agent.** — (1) A registered agent filing must state:

- (a) The name of the represented entity's commercial registered agent; or
- (b) If the entity does not have a commercial registered agent:
  - (i) The name and street address of the entity's noncommercial registered agent; or
  - (ii) The title of an office or other position with the entity if service of process is to be sent to the person holding that office or position, and the street address of the business office of that person.
- (2) The appointment of a registered agent pursuant to subsection (1)(a) or (b)(i) of this section is an affirmation by the represented entity that the agent has consented to serve as such.

(3) The secretary of state shall make available in a record as soon as practicable a daily list of filings that contain the name of a registered agent. The list must:

- (a) Be available for at least fourteen (14) calendar days;
- (b) List in alphabetical order the names of the registered agents; and
- (c) State the type of filing and name of the represented entity making the filing.

**History.**

I.C., § 30-405, as added by 2007, ch. 314,  
§ 1, p. 887.

**OFFICIAL COMMENT**

Subsection (a)(1) [(1)(a)] gives an entity the option of listing just the name of its commercial registered agent in a registered agent filing and omitting the address of the registered agent. If the commercial registered agent subsequently changes its address, that change will be reflected in the filing made by the agent under Section 6 [§ 30-406], as amended under Section 10 [§ 30-410], but no change will be necessary in the registered agent filing of any of the entities represented by the commercial registered agent. The ad-

dress of an entity's commercial registered agent may be ascertained from the records of the Secretary of State by consulting its listing under Section 6 [§ 30-406].

The address of an entity's noncommercial registered agent is usually not a business address of the represented entity. On the other hand, subsection 5(a)(2)(B) [(1)(b)(ii)] permits an entity to designate a person within the organization, such as its general counsel, to serve as its registered agent; and in that circumstance the address of the regis-



tered agent may very well be a business address of the represented entity.

The addresses required by subsection (a) [(1)] to be stated in a registered agent filing must satisfy the requirements in Section 4 [§ 30-404].

Subsection (b) [(2)] avoids the need to include with a registered agent filing a consent of the registered agent to serve as such.

Subsection (c) [(3)] creates a procedure that will permit registered agents to determine if they have been named in filings of which they were not aware by periodically consulting the list prepared by the Secretary of State. Subsection (c) [(3)] requires the registered agents to be listed in alphabetical order to facilitate the use of the list by registered agents and

also to indicate the type of filing (e.g., articles of incorporation, certificates of limited partnership, appointments of agents under Section 12 [§ 30-412] of this Act, etc.) in which each registered agent is named. Subsection (c) [(3)] will not be necessary under the circumstances described in the Legislative Note because registered agents may consult the regular database maintained by the Secretary of State to verify when they have been named as a registered agent.

Subsection (a) [(1)] is a generalization of Section 5.01 of the Model Business Corporation Act, Section 114 of the Uniform Limited Partnership Act, and Section 108 of the Uniform Limited Liability Company Act.

**30-406. Listing of commercial registered agent.** — (1) An individual or a domestic or foreign entity may become listed as a commercial registered agent by filing with the secretary of state a commercial registered agent listing statement signed by or on behalf of the person which states:

- (a) The name of the individual or the name, type, and jurisdiction of organization of the entity;
- (b) That the person is in the business of serving as a commercial registered agent in this state; and
- (c) The street address of a place of business of the person in this state to which service of process and other notice and documents being served on or sent to entities represented by it may be delivered.

(2) A commercial registered agent listing statement may include the information regarding acceptance of service of process in a record by the commercial registered agent provided for in section 30-413(4), Idaho Code.

(3) If the name of a person filing a commercial registered agent listing statement is not distinguishable on the records of the secretary of state from the name of another commercial registered agent listed under this section, the person must adopt a fictitious name that is distinguishable and use that name in its statement when it does business in this state as a commercial registered agent.

(4) A commercial registered agent listing statement takes effect upon filing.

(5) The secretary of state shall note the filing of the commercial registered agent listing statement in the index of filings maintained by the secretary of state for each entity represented by the registered agent at the time of the filing. The statement has the effect of deleting the address of the registered agent from the registered agent filing of each of those entities.

#### History.

I.C., § 30-406, as added by 2007, ch. 314, § 1, p. 887.

#### OFFICIAL COMMENT

This section is a substantial simplification of practice because it removes the need to amend the filed record of every entity repre-

sented by a commercial registered agent when the agent changes its address.

Subsection (a)(3) [(1)(c)] only permits a

commercial registered agent to list one address where service of process and other notices may be sent to entities represented by the agent. This may require a change in practice for registered agents who have previously maintained more than one address in a state and have permitted represented entities to choose which address they would use in their registered agent filings. A corporation, for example, located in one part of a state might include in its articles of incorporation an address for its registered agent which is the address of an office of the agent located close to the corporation and which is different than the address used by a corporation in another part of the state which has the same registered agent but uses a different office of the agent. In the example given, the registered agent will need to pick just one address in the state where all service of process will be sent to it. If a commercial registered agent

wishes to maintain more than one office in a state where service of process will be received by it, it can accomplish that result by organizing separate entities to conduct its business in the state and filing separate statements for each entity under this section.

The address required by subsection (a)(3) [(1)(c)] to be stated in a commercial registered agent listing statement must satisfy the requirements in Section 4 [§ 30-404].

Subsection (e) [(5)] is a transitional provision that deals with the effect on the entities represented by a registered agent at the time the agent is first listed under this section. The effect is to amend the registered agent filing of each such entity to delete the address of the registered agent consistent with Section 5(a)(1) [(1)(a)].

This section is patterned generally after 15 Pa.C.S. § 109.

### **30-407. Termination of listing of commercial registered agent. —**

(1) A commercial registered agent may terminate its listing as a commercial registered agent by filing with the secretary of state a commercial registered agent termination statement signed by or on behalf of the agent which states:

(a) The name of the agent as currently listed under section 30-406, Idaho Code; and

(b) That the agent is no longer in the business of serving as a commercial registered agent in this state.

(2) A commercial registered agent termination statement takes effect on the thirty-first day after the day on which it is filed.

(3) The commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of the commercial registered agent termination statement.

(4) When a commercial registered agent termination statement takes effect, the registered agent ceases to be an agent for service of process on each entity formerly represented by it. Until an entity formerly represented by a terminated commercial registered agent appoints a new registered agent, service of process may be made on the entity as provided in section 30-413, Idaho Code. Termination of the listing of a commercial registered agent under this section does not affect any contractual rights a represented entity may have against the agent or that the agent may have against the entity.

#### **History.**

I.C., § 30-407, as added by 2007, ch. 314, § 1, p. 887.

### **OFFICIAL COMMENT**

This section provides a procedure for a commercial registered agent to withdraw from the business of providing registered

agent services. Use of the procedure in this section will terminate the status of the registered agent as the agent for service of process

of all the entities represented by the agent. Thus, the procedure in this section differs from the procedure in Section 11 [§ 30-411], which permits a registered agent to resign

with respect to just a single represented entity instead of resigning generally with respect to all of its represented entities.

**30-408. Change of registered agent by entity.** — (1) A represented entity may change the information currently on file under section 30-405(1), Idaho Code, by filing with the secretary of state a statement of change signed on behalf of the entity which states:

- (a) The name of the entity; and
  - (b) The information that is to be in effect as a result of the filing of the statement of change.
- (2) The interest holders or governors of a domestic entity need not approve the filing of:
- (a) A statement of change under this section; or
  - (b) A similar filing changing the registered agent or registered office of the entity in any other jurisdiction.
- (3) The appointment of a registered agent pursuant to subsection (1) of this section is an affirmation by the represented entity that the agent has consented to serve as such.
- (4) A statement of change filed under this section takes effect upon filing.
- (5) As an alternative to using the procedures in this section, a represented entity may change the information currently on file under section 30-405(1), Idaho Code, by amending its most recent registered agent filing in the manner provided by the laws of this state other than this chapter for amending that filing.

**History.**

I.C., § 30-408, as added by 2007, ch. 314,  
§ 1, p. 887.

**OFFICIAL COMMENT**

Changes of the registered agent or the office address of a registered agent are usually routine matters that do not affect the rights of the interest holders of the represented entity. This section permits those changes to be made without a formal amendment of an entity's public organic document, without approval of its interest holders, and, indeed, even without formal approval by its governors (i.e., the persons managing the entity's affairs, such as the board of directors of a corporation).

Subsection (c) [(3)] avoids the need to file with a statement of change a consent of the new registered agent being designated.

Subsection (e) [(5)] makes clear that the

procedures in this section are not exclusive. A common way in which an entity changes its registered agent or registered office is to include the change in an amendment of its public organic document.

Subsection (a) [(1)] is a generalization of Section 5.02(a) of the Model Business Corporation Act, Section 115 of the Uniform Limited Partnership Act, and Section 109 of the Uniform Limited Liability Company Act. As to subsection (c) [(3)], compare Section 5.02(a)(5) of the Model Business Corporation Act. Subsection (d) [(4)] is patterned after Section 115(b) of the Uniform Limited Partnership Act.

**30-409. Change of name or address by noncommercial registered agent.** — (1) If a noncommercial registered agent changes its name or its address as currently in effect with respect to a represented entity pursuant



to section 30-405(1), Idaho Code, the agent shall file with the secretary of state, with respect to each entity represented by the agent, a statement of change signed by or on behalf of the agent which states:

- (a) The name of the entity;
  - (b) The name and address of the agent as currently in effect with respect to the entity;
  - (c) If the name of the agent has changed, its new name; and
  - (d) If the address of the agent has changed, the new address.
- (2) A statement of change filed under this section takes effect upon filing.
- (3) A noncommercial registered agent shall promptly furnish the represented entity with notice in a record of the filing of a statement of change and the changes made by the filing.

**History.**

I.C., § 30-409, as added by 2007, ch. 314,  
§ 1, p. 887.

**OFFICIAL COMMENT**

This section permits a noncommercial registered agent to change the name and address of the agent that appears in the registered agent filing of an entity represented by the agent. Because the noncommercial registered agent is not listed under Section 6 [§ 30-406], the agent will not be able to use the procedures in Section 10 [§ 30-410] which permit commercial registered agents to make only one filing to change their name and address

for all entities represented by them. Thus the noncommercial registered agent will need to make a filing under this section for each entity represented by the agent.

An address included in a statement of change must satisfy the requirements in Section 4 [§ 30-404].

This section is patterned after 15 Pa.C.S. § 108.

**30-410. Change of name, address, or type of organization by commercial registered agent.** — (1) If a commercial registered agent changes its name, its address as currently listed under section 30-406(1), Idaho Code, or its type or jurisdiction of organization, the agent shall file with the secretary of state a statement of change signed by or on behalf of the agent which states:

- (a) The name of the agent as currently listed under section 30-406(1), Idaho Code;
  - (b) If the name of the agent has changed, its new name;
  - (c) If the address of the agent has changed, the new address; and
  - (d) If the type or jurisdiction of organization of the agent has changed, the new type or jurisdiction of organization.
- (2) The filing of a statement of change under subsection (1) of this section is effective to change the information regarding the commercial registered agent with respect to each entity represented by the agent.
- (3) A statement of change filed under this section takes effect upon filing.
- (4) A commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of a statement of change relating to the name or address of the agent and the changes made by the filing.
- (5) If a commercial registered agent changes its address without filing a statement of change as required by this section, the secretary of state may

cancel the listing of the agent under section 30-406, Idaho Code. A cancellation under this subsection has the same effect as a termination under section 30-407, Idaho Code. Promptly after canceling the listing of an agent, the secretary of state shall serve notice in a record in the manner provided in section 30-413(2) or (3), Idaho Code, on:

- (a) Each entity represented by the agent, stating that the agent has ceased to be an agent for service of process on the entity and that, until the entity appoints a new registered agent, service of process may be made on the entity as provided in section 30-413, Idaho Code; and
- (b) The agent, stating that the listing of the agent has been canceled under this section.

**History.**

I.C., § 30-410, as added by 2007, ch. 314,  
§ 1, p. 887.

**OFFICIAL COMMENT**

This section permits a commercial registered agent to make a single filing that has the effect of changing the name or address of the agent for all of the entities represented by it.

An address included in a statement of change must satisfy the requirements in Section 4 [§ 30-404].

Subsection (e) [(5)] provides a procedure by which the Secretary of State may cancel the listing of a commercial registered agent when the Secretary of State learns that the agent has changed its address without amending its listing as a commercial registered agent. When the Secretary of State acts to cancel the listing of a commercial registered agent, the

Secretary of State is required to notify both (i) the entities represented by the agent that they no longer have a valid registered agent and (ii) the agent that it no longer is listed as a commercial registered agent. Unlike in the case of a resignation under Section 11 [§ 30-411] which is initiated by the registered agent and thus does not require a notice from the Secretary of State to the agent, notice by the Secretary of State to the agent is needed under this section so that the agent has notice that its representation of the entities it previously represented has terminated under Section 7 [§ 30-407].

This section is patterned after 15 Pa.C.S. § 109(b).

**30-411. Resignation of registered agent.** — (1) A registered agent may resign at any time with respect to a represented entity by filing with the secretary of state a statement of resignation signed by or on behalf of the agent which states:

- (a) The name of the entity;
- (b) The name of the agent;
- (c) That the agent resigns from serving as agent for service of process for the entity; and
- (d) The name and address of the person to which the agent will send the notice required by subsection (3) of this section.

(2) A statement of resignation takes effect on the earlier of the thirty-first day after the day on which it is filed or the appointment of a new registered agent for the represented entity.

(3) The registered agent shall promptly furnish the represented entity notice in a record of the date on which a statement of resignation was filed.

(4) When a statement of resignation takes effect, the registered agent ceases to have responsibility for any matter tendered to it as agent for the represented entity. A resignation under this section does not affect any

contractual rights the entity has against the agent or that the agent has against the entity.

(5) A registered agent may resign with respect to a represented entity whether or not the entity is in good standing.

**History.**

I.C., § 30-411, as added by 2007, ch. 314, § 1, p. 887.

**OFFICIAL COMMENT**

Resignation under this section may be accomplished solely by action of the registered agent and does not require the cooperation or consent of the represented entity. Whether a resignation violates a contract between the registered agent and the represented entity is beyond the scope of this Act and subsection (d) [(4)] preserves whatever claims a represented entity may have against its registered agent for a wrongful termination. Even if a resignation were to violate such a contract, the resignation would still be effective if the provisions of this section are followed.

Resignation under this section relates only to the entity named in the statement of resignation. Thus, the procedure in this section differs from the procedure in Section 7 [§ 30-407] which terminates the status of the agent as agent for all of the entities represented by it.

The requirements of Section 4 [§ 30-404] with respect to addresses do not apply to subsection (a)(4) [(1)(d)] because the registered agent may not have all the required information available.

Subsection (b) [(2)] delays the effectiveness of a statement of resignation for 31 days to allow the notice of the resignation that must be sent under subsection (c) [(3)] to reach the

represented entity and to allow the represented entity to arrange for a substitute registered agent.

Subsection (e) [(5)] makes clear that a registered agent may resign with respect to an entity that is not in good standing and supercedes the contrary administrative practice in some states of refusing to accept any filings with respect to an entity that is not in good standing until the problem with the entity's standing is cured.

Subsection (a) [(1)] is a generalization of Section 5.03(a) of the Model Business Corporation Act, Section 116(a) of the Uniform Limited Partnership Act, and Section 110(a) of the Uniform Limited Liability Company Act. Subsection (b) [(2)] is a generalization of Section 5.03(c) of the Model Business Corporation Act, Section 116(c) of the Uniform Limited Partnership Act, and Section 110(c) of the Uniform Limited Liability Company Act. Subsection (c) [(3)] is derived from Section 5.03(b) of the Model Business Corporation Act, Section 116(b) of the Uniform Limited Partnership Act, and Section 110(b) of the Uniform Limited Liability Company Act, except that notice under this Act is to be given by the resigning registered agent rather than the Secretary of State.

**30-412. Appointment of agent by nonfiling or nonqualified foreign entity.** — (1) A domestic entity that is not a filing entity or a nonqualified foreign entity may file with the secretary of state a statement appointing an agent for service of process signed on behalf of the entity which states:

- (a) The name, type, and jurisdiction of organization of the entity; and
- (b) The information required by section 30-405(1), Idaho Code.

(2) A statement appointing an agent for service of process takes effect upon filing.

(3) The appointment of a registered agent under this section does not qualify a nonqualified foreign entity to do business in this state and is not sufficient alone to create personal jurisdiction over the nonqualified foreign entity in this state.

(4) A statement appointing an agent for service of process may not be rejected for filing because the name of the entity filing the statement is not distinguishable on the records of the secretary of state from the name of



another entity appearing in those records. The filing of a statement appointing an agent for service of process does not make the name of the entity filing the statement unavailable for use by another entity.

(5) An entity that has filed a statement appointing an agent for service of process may cancel the statement by filing a statement of cancellation, which shall take effect upon filing, and must state the name of the entity and that the entity is canceling its appointment of an agent for service of process in this state. A statement appointing an agent for service of process which has not been canceled earlier is effective for a period of five (5) years after the date of filing.

(6) A statement appointing an agent for service of process for a nonqualified foreign entity terminates automatically on the date the entity becomes a qualified foreign entity.

**History.**

I.C., § 30-412, as added by 2007, ch. 314,  
§ 1, p. 887.

**OFFICIAL COMMENT**

Filing under this section is elective, and no inference should be drawn from the failure of an entity to make such a filing.

Subsection (a) [(1)] is patterned after Section 10 of the Uniform Unincorporated Non-profit Association Act.

**30-413. Service of process on entities.** — (1) A registered agent is an agent of the represented entity authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity.

(2) If an entity that previously filed a registered agent filing with the secretary of state no longer has a registered agent, or if its registered agent cannot with reasonable diligence be served, the entity may be served by registered or certified mail, return receipt requested, addressed to the governors of the entity by name at its principal office in accordance with any applicable judicial rules and procedures. The names of the governors and the address of the principal office may be as shown in the most recent annual report filed with the secretary of state. Service is perfected under this subsection at the earliest of:

- (a) The date the entity receives the mail;
- (b) The date shown on the return receipt, if signed on behalf of the entity;
- or
- (c) Five (5) days after its deposit with the United States postal service, if correctly addressed and with sufficient postage.

(3) If process, notice, or demand cannot be served on an entity pursuant to subsection (1) or (2) of this section, service of process may be made by handing a copy to the manager, clerk, or other person in charge of any regular place of business or activity of the entity if the person served is not a plaintiff in the action.

(4) Service of process, notice, or demand on a registered agent must be in the form of a written document, except that service may be made on a commercial registered agent in such other forms of a record, and subject to

such requirements as the agent has stated from time to time in its listing under section 30-406, Idaho Code, that it will accept.

(5) Service of process, notice, or demand may be perfected by any other means prescribed by law other than this chapter.

**History.**

I.C., § 30-413, as added by 2007, ch. 314,  
§ 1, p. 887.

**OFFICIAL COMMENT**

Subsection (c) [(3)] provides a means for serving process on an entity that cannot be served under subsection (a) [(1)] or (b) [(2)]. Some entity organic laws require that service of process in that circumstance be made on the Secretary of State, but that leaves unanswered the question of what the Secretary of State should do with the process. Subsection (c) [(3)] is patterned after Pa. R. Civ. Proc. 423(3) and 424(2). A similar approach is taken by Fed. R. Civ. Proc. 4(h)(1).

Subsections (a) [(1)] and (d) [(4)] are a generalization of Section 5.04(a) and (c) of the Model Business Corporation Act, Section 117(a) and (f) of the Uniform Limited Partnership Act, and Section 111(a) and (e) of the Uniform Limited Liability Company Act. Subsection (b) [(2)] is a generalization of Section 5.04(b) of the Model Business Corporation Act.

**30-414. Duties of registered agent.** — The only duties under this chapter of a registered agent that has complied with this chapter are:

(1) To forward to the represented entity at the address most recently supplied to the agent by the entity any process, notice, or demand that is served on the agent;

(2) To provide the notices required by this chapter to the entity at the address most recently supplied to the agent by the entity;

(3) If the agent is a noncommercial registered agent, to keep current the information required by section 30-405(1), Idaho Code, in the most recent registered agent filing for the entity;

(4) If the agent is a commercial registered agent, to keep current the information listed for it under section 30-406(1), Idaho Code; and

(5) To have an individual available during normal business hours at the registered agent's street address to accept service of process and other notices and documents.

**History.**

I.C., § 30-414, as added by 2007, ch. 314,  
§ 1, p. 887.

**OFFICIAL COMMENT**

This section is limited to prescribing the duties of a registered agent under this Act. An agent may undertake other responsibilities to a represented entity, such as by contract or course of dealing, but those duties will be determined under other law.

The Delaware General Corporation Law has been amended to add a new Section 132(b)(1), 8 Del. Code § 132(b)(1), requiring a registered agent to be generally available in the state to accept service of process. It was

not considered necessary to include that provision in the Act because Section 13 [(§ 30-413)] provides alternative means of serving process if a registered agent cannot with reasonable diligence be served.

The Delaware General Corporation has also been amended to require a represented corporation to notify its registered agent when the corporation changes its business address and to permit a registered agent to resign if it is not supplied with current con-

tact information. 8 Del. Code § 132(d). Section 11 [§ 30-411] of the Act provides registered agents with a broader right to resign

than is available under the Delaware amendment.

**30-415. Jurisdiction and venue.** — The appointment or maintenance in this state of a registered agent does not by itself create the basis for personal jurisdiction over the represented entity in this state. The address of the agent does not determine venue in an action or proceeding involving the entity.

**History.**

I.C., § 30-415, as added by 2007, ch. 314, § 1, p. 887.

**OFFICIAL COMMENT**

As discussed in the Introduction to the Act, one of the purposes of the Act is to eliminate the registered office address as a means of determining where venue is to be laid in an action involving a represented entity. Consistent with that purpose, this section makes clear that the address of a registered agent does not determine venue. This section may be inconsistent with other law or procedural

rules in a state, and thus existing law on venue should be reviewed when this Act is considered for adoption in a state. *Compare Cooper v. Chevron U.S.A., Inc.*, 132 N.M. 382, 49 P.3d 61 (N.M. 2002) (applying New Mexico statute permitting venue “in the county where the statutory agent designated by the foreign corporation resides”).

**30-416. Consistency of application.** — In applying and construing this chapter, consideration must be given to the need to promote consistency of the law with respect to its subject matter among states that enact it.

**History.**

I.C., § 30-416, as added by 2007, ch. 314, § 1, p. 887.

**OFFICIAL COMMENT**

A provision similar to this section is included in each uniform act promulgated by the Conference. Because this Act is not a uniform act, however, the usual formulation

of this section has been changed from “uniformity” of application to “consistency” of application to promote the same policy while recognizing the different nature of this Act.

**30-417. Relation to electronic signatures in global and national commerce act.** — This chapter modifies, limits, and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. section 7001, et seq., but does not modify, limit, or supersede section 101 of that act, 15 U.S.C. section 7001(c), or authorize delivery of any of the notices described in section 103 of that act, 15 U.S.C. section 7003(b).

**History.**

I.C., § 30-417, as added by 2007, ch. 314, § 1, p. 887.

**30-418. Savings clause.** — This chapter does not affect an action or proceeding commenced or right accrued before July 1, 2007.



**History.**

I.C., § 30-418, as added by 2007, ch. 314,  
§ 1, p. 887.

**CHAPTER 6****IDAHO UNIFORM LIMITED LIABILITY COMPANY ACT****PART 1. GENERAL PROVISIONS****SECTION.**

- 30-6-101. Short title.
- 30-6-102. Definitions.
- 30-6-103. Knowledge — Notice.
- 30-6-104. Nature, purpose and duration of limited liability company.
- 30-6-105. Powers.
- 30-6-106. Governing law.
- 30-6-107. Supplemental principles of law.
- 30-6-108. Name.
- 30-6-109. Reservation of name.
- 30-6-110. Operating agreement — Scope, function and limitations.
- 30-6-111. Operating agreement — Effect on limited liability company and persons becoming members — Preformation agreement.
- 30-6-112. Operating agreement — Effect on third parties and relationship to records effective on behalf of limited liability company.
- 30-6-113. Designated office and registered agent.
- 30-6-114. Change of designated office.

**PART 2. FORMATION — CERTIFICATE OF ORGANIZATION AND OTHER FILINGS**

- 30-6-201. Formation of limited liability company — Certificate of organization.
- 30-6-201A. Professional company.
- 30-6-202. Amendment or restatement of certificate of organization.
- 30-6-203. Signing of records to be delivered for filing to secretary of state.
- 30-6-204. Signing and filing pursuant to judicial order.
- 30-6-205. Delivery to and filing of records by secretary of state — Effective time and date.
- 30-6-206. Correcting filed record.
- 30-6-207. Liability for inaccurate information in filed record.
- 30-6-208. Certificate of existence or authorization.
- 30-6-209. Annual report for secretary of state.
- 30-6-210. Filing, service and copying fees.

**PART 3. RELATIONS OF MEMBERS AND MANAGERS TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY**

- 30-6-301. No agency power of member as member.

**SECTION.**

- 30-6-302. Statement of authority.
- 30-6-303. Statement of denial.
- 30-6-304. Liability of members and managers.

**PART 4. RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY COMPANY**

- 30-6-401. Becoming a member.
- 30-6-402. Form of contribution.
- 30-6-403. Liability for contributions.
- 30-6-404. Sharing of and right to distributions before dissolution.
- 30-6-405. Limitations on distribution.
- 30-6-406. Liability for improper distributions.
- 30-6-407. Management of limited liability company.
- 30-6-408. Indemnification and insurance.
- 30-6-409. Standards of conduct for members and managers.
- 30-6-410. Right of members, managers and dissociated members to information.

**PART 5. TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS**

- 30-6-501. Nature of transferable interest.
- 30-6-502. Transfer of transferable interest.
- 30-6-503. Charging order.
- 30-6-504. Power of personal representative of deceased member.

**PART 6. MEMBER'S DISSOCIATION**

- 30-6-601. Member's power to dissociate — Wrongful dissociation.
- 30-6-602. Events causing dissociation.
- 30-6-603. Effect of person's dissociation as member.

**PART 7. DISSOLUTION AND WINDING UP**

- 30-6-701. Events causing dissolution.
- 30-6-702. Winding up.
- 30-6-703. Known claims against dissolved limited liability company.
- 30-6-704. Other claims against dissolved limited liability company.
- 30-6-705. Grounds for administrative dissolution, procedure and effect.
- 30-6-706. Reinstatement following administrative dissolution.
- 30-6-707. Appeal from rejection of reinstatement.

## SECTION.

30-6-708. Distribution of assets in winding up limited liability company's activities.

## PART 8. FOREIGN LIMITED LIABILITY COMPANIES

- 30-6-801. Governing law.
- 30-6-802. Application for certificate of authority.
- 30-6-803. Activities not constituting transacting business.
- 30-6-804. Filing of certificate of authority.
- 30-6-805. Noncomplying name of foreign limited liability company.
- 30-6-806. Revocation of certificate of authority.
- 30-6-807. Cancellation of certificate of authority.
- 30-6-808. Effect of failure to have certificate of authority.
- 30-6-809. Action by attorney general.

## PART 9. ACTIONS BY MEMBERS

- 30-6-901. Direct action by member.

## SECTION.

- 30-6-902. Derivative action.
- 30-6-903. Proper plaintiff.
- 30-6-904. Pleading.
- 30-6-905. Special litigation committee.
- 30-6-906. Proceeds and expenses.

## PART 10. MERGER, INTEREST EXCHANGE, CONVERSION AND DOMESTICATION

- 30-6-1001. Applicability of Idaho entity transactions act.
- 30-6-1002. Restrictions on approval of mergers, interest exchanges, conversions and domestications.

## PART 11. MISCELLANEOUS PROVISIONS

- 30-6-1101. Uniformity of application and construction.
- 30-6-1102. Relation to electronic signatures in global and national commerce act.
- 30-6-1103. Savings clause.
- 30-6-1104. Application to existing relationships.

## OFFICIAL COMMENT

## PREFATORY NOTE

The Uniform Limited Liability Company Act ("ULLCA") was conceived in 1992 and first adopted by the Conference in 1994. By that time nearly every state had adopted an LLC statute, and those statutes varied considerably in both form and substance. Many of those early statutes were based on the first version of the ABA Model Prototype LLC Act.

ULLCA's drafting relied substantially on the then recently adopted Revised Uniform Partnership Act ("RUPA"), and this reliance was especially heavy with regard to member-managed LLCs. ULLCA's provisions for manager-managed LLCs comprised an amalgam fashioned from the 1985 Revised Uniform Limited Partnership Act ("RULPA") and the Model Business Corporation Act ("MBCA"). ULLCA's provisions were also significantly influenced by the then-applicable federal tax classification regulations, which classified an unincorporated organization as a corporation if the organization more nearly resembled a corporation than a partnership. Those same regulations also made the tax classification of single-member LLCs problematic.

Much has changed. All states and the District of Columbia have adopted LLC statutes, and many LLC statutes have been substantially amended several times. LLC filings are significant in every U.S. jurisdiction, and in many states new LLC filings approach or even outnumber new corporate filings on an

annual basis. Manager-managed LLCs have become a significant factor in non-publicly-traded capital markets, and increasing numbers of states provide for mergers and conversions involving LLCs and other unincorporated entities.

In 1997, the tax classification context changed radically, when the IRS' "check-the-box" regulations became effective. Under these regulations, an "unincorporated" business entity is taxed either as a partnership or disregarded entity (depending upon the number of owners) unless it elects to be taxed as a corporation. Exceptions exist (e.g., entities whose interests are publicly-traded), but, in general, tax classification concerns no longer constrain the structure of LLCs and the content of LLC statutes. Single-member LLCs, once suspect because novel and of uncertain tax status, are now popular both for sole proprietorships and as corporate subsidiaries.

In 1995, the Conference amended RUPA to add "full-shield" LLP provisions, and today every state has some form of LLP legislation (either through a RUPA adoption or shield-related revisions to a UPA-based statute). While some states still provide only a "partial shield" for LLPs, many states have adopted "full shield" LLP provisions. In full-shield jurisdictions, LLPs and member-managed LLCs offer entrepreneurs very similar attributes and, in the case of professional service organizations, LLPs may dominate the field.

ULLCA was revised in 1996 in anticipation of the "check the box" regulations and has

been adopted in a number of states. In many non-ULLCA states, the LLC statute includes RUPA-like provisions. However, state LLC laws are far from uniform.

Eighteen years have passed since the IRS issued its gate-opening Revenue Ruling 88-76, declaring that a Wyoming LLC would be taxed as a partnership despite the entity's corporate-like liability shield. More than eight years have passed since the IRS opened the gate still further with the "check the box" regulations. It is an opportune moment to identify the best elements of the myriad "first generation" LLC statutes and to infuse those elements into a new, "second generation" uniform act.

### *Noteworthy Provisions of the New Act*

The Revised Uniform Limited Company Act is drafted to replace a state's current LLC statute, whether or not that statute is based on ULLCA. The new Act's noteworthy provisions concern:

- the operating agreement
- fiduciary duty
- the ability to "pre-file" a certificate of organization without having a member at the time of the filing
- the power of a member or manager to bind the limited liability company
- default rules on management structure
- charging orders
- a remedy for oppressive conduct
- derivative claims and special litigation committees
- organic transactions — mergers, conversions, and domestications

**The Operating Agreement:** Like the partnership agreement in a general or limited partnership, an LLC's operating agreement serves as the foundational contract among the entity's owners. RUPA pioneered the notion of centralizing all statutory provisions pertaining to the foundational contract, and — like ULLCA and ULPA (2001) — the new Act continues that approach. However, because an operating agreement raises issues too numerous and complex to include easily in a single section, the new Act uses three related sections to address the operating agreement:

- Section 110 [§ 30-6-110] — scope, function, and limitations;
- Section 111 [§ 30-6-111] — effect on limited liability company and persons becoming members; preformation agreement; and
- Section 112 [§ 30-6-112] — effect on third parties and relationship to records effective on behalf of limited liability company.

The new Act also contains a number of substantive innovations concerning the operating agreement, including:

- better delineating the extent to which the operating agreement can define, alter, or even eliminate aspects of fiduciary duty;
- expressly authorizing the operating agreement to relieve members and managers from liability for money damages arising from breach of duty, subject to specific limitations; and
- stating specific rules for applying the statutory phrase "manifestly unreasonable" and thereby providing clear guidance for courts considering whether to invalidate operating agreement provisions that address fiduciary duty and other sensitive matters.

**Fiduciary Duty:** RUPA also pioneered the idea of codifying partners' fiduciary duties in order to protect the partnership agreement from judicial second-guessing. This approach — to "cabin in" (or corral) fiduciary duty — was followed in ULLCA and ULPA (2001). In contrast, the new Act recognizes that, at least in the realm of limited liability companies:

- the "cabin in" approach creates more problems than it solves (e.g., by putting inordinate pressure on the concept of "good faith and fair dealing"); and
- the better way to protect the operating agreement from judicial second-guessing is to:
  - increase and clarify the power of the operating agreement to define or reshape fiduciary duties (including the power to eliminate aspects of fiduciary duties); and
  - provide some guidance to courts when a person seeks to escape an agreement by claiming its provisions are "manifestly unreasonable."

Accordingly, the new Act codifies major fiduciary duties but does not purport to do so exhaustively. *See* Section 409 [§ 30-6-409].

**The Ability to "Pre-File" a Certificate of Organization:** The Comments to Section 201 explain in detail how the new Act resolves the difficult question of the "shelf LLC" — i.e., an LLC formed without having at least one member upon formation. In short, the Act: (i) permits an organizer to file a certificate of organization without a person "waiting in the wings" to become a member upon formation; but (ii) provides that the LLC is not formed until and unless at least one person becomes a member and the organizer makes a second filing stating that the LLC has at least one member.

**The Power of a Member or Manager to Bind the Limited Liability Company:** In 1914, the original Uniform Partnership Act codified a particular type of apparent authority by position, providing that "[t]he act of every partner ... for apparently carrying on in the usual way the business of the partnership binds the partnership ...." This concept of "statutory



apparent authority” applies by linkage in the 1916 Uniform Limited Partnership Act and the 1976/85 Revised Uniform Limited Partnership Act and appears in RUPA, ULLCA, ULPA (2001), and almost every LLC statute in the United States.

The concept makes good sense for general and limited partnerships. A third party dealing with either type of partnership can know by the formal name of the entity and by a person’s status as general or limited partner whether the person has the power to bind the entity.

The concept does not make sense for modern LLC law, because: (i) an LLC’s status as member-managed or manager-managed is not apparent from the LLC’s name (creating traps for unwary third parties); and (ii) although most LLC statutes provide templates for member-management and manager-management, variability of management structure is a key strength of the LLC as a form of business organization.

The new Act recognizes that “statutory apparent authority” is an attribute of partnership formality that does not belong in an LLC statute. Section 301(a) [§ 30-6-301(1)] provides that “a member is not an agent of the limited liability company solely by reason of being a member.” Other law — most especially the law of agency — will handle power-to-bind questions.

Although conceptually innovative, this approach will not significantly alter the commercial reality that exists between limited liability companies and third parties, because:

1. The vast majority of interactions between limited liability companies and “third parties” are quotidian and transpire without agency law issues being recognized by the parties, let alone disputed.
2. When a limited liability company enters into a major transaction with a sophisticated third party, the third party never relies on statutory apparent authority to determine that the person purporting to act for the limited liability company has the authority to do so.
3. Most LLCs use employees to carry out most of the LLC’s dealings with third parties. In that context, the agency power of members and managers is usually irrelevant. (If an employee’s authority is contested and the employee “reports to” a member or manager, the member or manager’s authority will be relevant to determining the employee’s authority. However, in that situation, agency law principles will suffice to delineate the manager or member’s supervisory authority.)

4. Very few current LLC statutes contain rules for attributing to an LLC the wrongful acts of the LLC’s members or managers. *Compare* RUPA § 305. In this realm, this Act merely acknowledges pre-existing reality.

5. As explained in detail in the Comments to section 301 [§ 30-6-301] and 407(c) [§ 30-6-407(3)], agency law principles are well-suited to the tasks resulting from the “de-codification” of apparent authority by position.

The moment is opportune for this reform. The newly-issued Restatement (Third) of Agency gives substantial attention to the power of an enterprise’s participants to bind the enterprise. In addition, the new Act has “souped up” RUPA’s statement of authority to permit an LLC to publicly file a statement of authority for a position (not merely a particular person). Statements of authority will enable LLCs to provide reliable documentation of authority to enter into transactions without having to disclose to third parties the entirety of the operating agreement. (The new Act also has eliminated prolix provisions that sought to restate agency law rules on notice and knowledge.)

**Default Rules on Management Structure:** The new Act retains the manager-managed and member-managed constructs as options for members to use in configuring their *inter se* relationship, and the operating agreement is the vehicle by which the members make and state their choice of management structure. Given the elimination of statutory apparent authority, it is unnecessary and could be confusing to require the articles of organization to state the members’ determination on this point.

**Charging Orders:** The charging order mechanism: (i) dates back to the 1914 Uniform Partnership Act and the English Partnership Act of 1890; and (ii) is an essential part of the “pick your partner” approach that is fundamental to the law of unincorporated businesses. The new Act continues the charging order mechanism, but modernizes the statutory language so that the language (and its protections against outside interference in an LLC’s activities) can be readily understood.

**A Remedy for Oppressive Conduct:** Reflecting case law developments around the country, the new Act permits a member (but not a transferee) to seek a court order “dissolving the company on the grounds that the managers or those members in control of the company . have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the [member].” Section 701(5)(B) [§ 30-6-701(1)(e)(iii)]. This provision is necessary given the perpetual duration of an LLC formed under this Act, Section 104(c) [§ 30-6-104(3)], and this Act’s elimina-

tion of the “put right” provided by ULLCA, § 701 [§ 30-6-701].

Derivative Claims and Special Litigation Committees: The new Act contains modern provisions addressing derivative litigation, including a provision authorizing special litigation committees and subjecting their composition and conduct to judicial review.

Organic Transactions — Mergers, Conversions, and Domestications: The new Act has comprehensive, self-contained provisions for these transactions, including “inter-species” transactions.

*No Provision for “Series” LLCs*

The new Act also has a very noteworthy omission; it does not authorize “series LLCs.” Under a series approach, a single limited liability company may establish and contain within itself separate series. Each series is treated as an enterprise separate from each other and from the LLC itself. Each series has associated with it specified members, assets, and obligations, and — due to what have been called “internal shields” — the obligations of one series are not the obligation of any other series or of the LLC.

Delaware pioneered the series concept, and the concept has apparently been quite useful in structuring certain types of investment funds and in arranging complex financing. Other states have followed Delaware’s lead, but a number of difficult and substantial questions remain unanswered, including:

- *conceptual* — How can a series be — and expect to be treated as — a separate legal person for liability and other purposes if the series is defined as part of another legal person?
- *bankruptcy* — Bankruptcy law has not recognized the series as a separate legal

person. If a series becomes insolvent, will the entire LLC and the other series become part of the bankruptcy proceedings? Will a bankruptcy court consolidate the assets and liabilities of the separate series?

- *efficacy of the internal shields in the courts of other states* — Will the internal shields be respected in the courts of states whose LLC statutes do not recognize series? Most LLC statutes provide that “foreign law governs” the liability of members of a foreign LLC. However, those provisions do not apply to the series question, because those provisions pertain to the liability of a member for the obligations of the LLC. For a series LLC, the pivotal question is entirely different — namely, whether some assets of an LLC should be immune from some of the creditors of the LLC.
- *tax treatment* — Will the IRS and the states treat each series separately? Will separate returns be filed? May one series “check the box” for corporate tax classification and the others not?
- *securities law* — Given the panoply of unanswered questions, what types of disclosures must be made when a membership interest is subject to securities law?

The Drafting Committee considered a series proposal at its February 2006 meeting, but, after serious discussion, no one was willing to urge adoption of the proposal, even for the limited purposes of further discussion. Given the availability of well-established alternate structures (e.g., multiple single member LLCs, an LLC “holding company” with LLC subsidiaries), it made no sense for the Act to endorse the complexities and risks of a series approach.

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PART 1. GENERAL PROVISIONS

**30-6-101. Short title.** — This chapter may be cited as the “Idaho Uniform Limited Liability Company Act.”

**History.**

I.C., § 30-6-101, as added by 2008, ch. 176, § 1, p. 480.

**Compiler’s Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

OFFICIAL COMMENT

This Act is drafted to replace a state’s current LLC statute, whether or not that statute is based on the original Uniform Lim-

ited Liability Company Act. Section 1104 [§ 30-6-1104] contains transition provisions.



**IDAHO REPORTER'S COMMENT**

The Idaho Uniform Limited Liability Company Act ("Idaho Act") includes some variations from the Revised Uniform Limited Liability Company Act ("RULLCA"). Idaho Reporter's Comments identify many of the material Idaho variations, but not all variations are accompanied by an Idaho Reporter's Comment. The Idaho Act uses a different subsection numbering scheme than RULLCA. As a result, subsection references in the Comments to RULLCA will not always correspond to the numbering of the Idaho Act. The predecessor Idaho Limited Liability Company Act (which until July 1, 2010 continues to govern all limited liability companies formed prior to July 1, 2008 that do not elect to be subject to the Idaho Act in the interim) is codified in title 53, chapter 6, Idaho Code.

**30-6-102. Definitions. —** In this chapter:

(1) "Allied professional services" means professional services which are so related in substance that they are frequently offered in conjunction with one another as parts of the same service package to the consumer.

(2) "Certificate of organization" means the certificate required by section 30-6-201, Idaho Code. The term includes the certificate as amended or restated.

(3) "Contribution" means any benefit provided by a person to a limited liability company:

(a) In order to become a member upon formation of the company and in accordance with an agreement between or among the persons that have agreed to become the initial members of the company;

(b) In order to become a member after formation of the company and in accordance with an agreement between the person and the company; or

(c) In the person's capacity as a member and in accordance with the operating agreement or an agreement between the member and the company.

(4) "Debtor in bankruptcy" means a person that is the subject of:

(a) An order for relief under Title 11 of the United States Code or a successor statute of general application; or

(b) A comparable order under federal, state or foreign law governing insolvency.

(5) "Designated office" means:

(a) The office that a limited liability company is required to designate and maintain under section 30-6-113, Idaho Code; or

(b) The principal office of a foreign limited liability company.

(6) "Distribution," except as otherwise provided in section 30-6-405(7), Idaho Code, means a transfer of money or other property from a limited liability company to another person on account of a transferable interest.

(7) "Effective," with respect to a record required or permitted to be delivered to the secretary of state for filing under this chapter, means effective under section 30-6-205(3), Idaho Code.

(8) "Foreign limited liability company" means an unincorporated entity formed under the law of a jurisdiction other than this state and denominated by that law as a limited liability company.

(9) "Limited liability company," except in the phrase "foreign limited liability company," means an entity formed under this chapter.

(10) "Manager" means a person that under the operating agreement of a manager-managed limited liability company is responsible, alone or in



concert with others, for performing the management functions stated in section 30-6-407(3), Idaho Code.

(11) "Manager-managed limited liability company" means a limited liability company that qualifies under section 30-6-407(1), Idaho Code.

(12) "Member" means a person that has become a member of a limited liability company under section 30-6-401, Idaho Code, and has not dissociated under section 30-6-602, Idaho Code.

(13) "Member-managed limited liability company" means a limited liability company that is not a manager-managed limited liability company.

(14) "Membership" or "membership interest" means, for purposes of a professional company formed under section 30-6-201A, Idaho Code, a member's transferable interest, together with the member's governance rights under part 4 of this chapter.

(15) "Operating agreement" means the agreement, whether or not referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, of all the members of a limited liability company, including a sole member, concerning the matters described in section 30-6-110(1), Idaho Code. The term includes the agreement as amended or restated.

(16) "Organizer" means a person that acts under section 30-6-201, Idaho Code, to form a limited liability company.

(17) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(18) "Principal office" means the principal executive office of a limited liability company or foreign limited liability company, whether or not the office is located in this state.

(19) "Professional company" means a limited liability company organized under the provisions of this chapter for the sole and specific purpose of rendering professional services, allied professional services, and services ancillary to the professional services and which has as its members only: (a) natural persons who themselves are duly licensed or otherwise legally authorized to render one (1) or more of the same professional services as the professional company; and/or (b) professional corporations, partnerships or limited liability companies, all of whose shareholders, partners or members are duly licensed or otherwise legally authorized to render one (1) or more of the same professional services as the professional company.

(20) "Professional service" means any type of service to the public which can be rendered by a member of any profession within the purview of his profession. For the purpose of this chapter, the professions shall be held to include the practices of architecture, chiropractic, dentistry, engineering, landscape architecture, law, medicine, nursing, occupational therapy, optometry, physical therapy, podiatry, professional geology, psychology, certified or licensed public accountancy, social work, surveying and veterinary medicine, and no others.

(21) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(22) “Registered agent” means an agent for service of process in this state in accordance with chapter 4, title 30, Idaho Code.

(23) “Sign” means, with the present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound or process.

(24) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(25) “Transfer” includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift and transfer by operation of law.

(26) “Transferable interest” means the right, as originally associated with a person’s capacity as a member, to receive distributions from a limited liability company in accordance with the operating agreement, whether or not the person remains a member or continues to own any part of the right.

(27) “Transferee” means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member.

#### History.

I.C., § 30-6-102, as added by 2008, ch. 176, § 1, p. 480.

**Compiler’s Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

### OFFICIAL COMMENT

This Section contains definitions for terms used throughout the Act, while Section 1001 [not adopted in Idaho] contains definitions specific to Article 10’s provisions on mergers, conversions and domestications. Section 405(g) [§ 30-6-405(7)] contains an exception to the definition of “distribution,” which is specific to Section 405 [§ 30-6-405].

**Paragraph (1) [(2)] Certificate of organization** — The original ULLCA and most other LLC statutes use “articles of organization” rather than “certificate of organization.” This Act purposely uses the latter term to signal that: (i) the certificate merely reflects the existence of an LLC (rather than being the locus for important governance rules); and (ii) this document is significantly different from articles of *incorporation*, which have a substantially greater power to affect *inter se*

rules for the corporate entity and its owners. For the relationship between the certificate of organization and the operating agreement, see Section 112(d) [§ 30-6-112(4)].

**Paragraph (2) [(3)] Contribution** — This definition serves to distinguish capital contributions from other circumstances under which a member or would-be member might provide benefits to a limited liability company (e.g., providing services to the LLC as an employee or independent contractor, leasing property to the LLC). The definition contemplates three typical situations in which contributions are made, and for each situation establishes two “markers” to identify capital contributions — the purpose for which the contributor makes the contribution and the agreement that contemplates the contribution:

circumstance	purpose/cause of providing benefits	the relevant agreement
pre-formation deal among would-be initial members [Paragraph 2(A) [(3)(a)]]	in order to become initial member(s)	agreement among would-be initial members
deal between an existing LLC and would-be member [Paragraph 2(B) [(3)(b)]]	in order to become a member	agreement between the LLC and the would-be member
member contribution [Paragraph 2(C) [(3)(c)]]	in member's capacity as a member	operating agreement or an agreement between the member and the LLC

This definition does not encompass capital raised from transferees, which is sometimes provided for in operating agreements. In such circumstances, the default rules for liquidating distributions should be altered accordingly. *See* Section 708(b)(1) [§ 30-6-708(2)(a)] (“reflects contributions made by a member and not previously returned”).

**Paragraph (7) [(8)] Foreign limited liability company** — Some statutes have elaborate definitions addressing the question of whether a non-U.S. entity is a “foreign limited liability company.” The NY statute, for example, defines a “foreign limited liability company” as:

an unincorporated organization formed under the laws of any jurisdiction, including any foreign country, other than the laws of this state (i) that is not authorized to do business in this state under any other law of this state and (ii) of which some or all of the persons who are entitled (A) to receive a distribution of the assets thereof upon the dissolution of the organization or otherwise or (B) to exercise voting rights with respect to an interest in the organization have, or are entitled or authorized to have, under the laws of such other jurisdiction, limited liability for the contractual obligations or other liabilities of the organization.

N.Y. LIMIT LIAB. CO. LAW § 102(k) (McKinney 2006). ULLCA § 101(8) [subsection (8) of this section] takes a similar but less complex approach (“an unincorporated entity organized under laws other than the laws of this State which afford limited liability to its owners comparable to the liability under Section 303 and is not required to obtain a certificate of authority to transact business under any law of this State other than this [Act]”). This Act follows Delaware’s still simpler approach. DEL. CODE ANN. tit. 6, § 18-101(4) (2006) (“denominated as such”).

**Paragraph (8) [(9)] Limited liability company** — This definition makes no reference to a limited liability company having

members upon formation, but Section 201 [§ 30-6-201] does. For a detailed discussion of the “shelf LLC” issue, see the Comment to Section 201 [§ 30-6-201].

**Paragraph (9) [(10)] Manager** — The Act uses the word “manager” as a term of art, whose applicability is confined to manager-managed LLCs. The phrase “manager-managed” is itself a term of art, referring only to an LLC whose operating agreement refers to the LLC as such. Paragraph 10 [(11)] (defining “manager-managed limited liability company”). Thus, for purposes of this Act, if the members of a *member-managed* LLC delegate plenipotentiary management authority to one person (whether or not a member), this Act’s references to “manager” do not apply to that person.

This approach does have the potential for confusion, but confusion around the term “manager” is common to almost all LLC statutes. The confusion stems from the choice to define “manager” as a term of art in a way that can be at odds with other, common usages of the word. For example, a member-managed LLC might well have an “office manager” or a “property manager.” Moreover, in a manager-managed LLC, the “property manager” is not likely to be a manager as the term is used in many LLC statutes. *See, e.g., Brown v. MR Group, LLC*, 278 Wis.2d 760, 768-9, 693 N.W.2d 138, 143 (Wis. App. 2005) (rejecting a party’s urging to use the dictionary definition of “manager” in determining coverage of a policy applicable to a limited liability company and its “managers” and relying instead on the meaning of the term under the Wisconsin LLC act).

Under this Act, the category of “person” is not limited to individuals. Therefore, a “manager” need not be a natural person. After a person ceases to be a manager, the term “manager” continues to apply to the person’s conduct while a manager. *See* Section 407(c)(7) [§ 30-6-407(3)(g)].

**Paragraph (10) [(11)] Manager-managed** — This Act departs from most LLC statutes (including the original ULLCA) by authorizing a private agreement (the operating agreement) rather than a public docu-



ment (certificate or articles of organization) to establish an LLC's status as a manager-managed limited liability company. Using the operating agreement makes sense, because under this Act managerial structure creates no statutory power to bind the entity. *See* Section 301 [§ 30-6-301] (eliminating statutory apparent authority). The only direct consequences of manager-managed status are *inter se* — principally the triggering of a set of rules concerning management structure, fiduciary duty, and information rights. Sections 407 — 410 [§§ 30-6-407 through 30-6-410]. The management structure rules are entirely default provisions — subject to change in whole or in part by the operating agreement. The operating agreement can also significantly affect the duty and rights provisions. Section 110 [§ 30-6-110].

For pre-existing limited liability companies that eventually become subject to this Act, Section 1104(c) [§ 30-6-1104(3)(b)] provides that “language in the company's articles of organization designating the company's management structure will operate as if that language were in the operating agreement.” For limited liability companies formed under this Act, the typical method to select manager-managed status will be an explicit provision of the operating agreement. However, a reference in the certificate of organization to manager-management might be evidence of the contents of the operating agreement. *See* Comment to Section 112(b) [§ 30-6-112(2)].

An LLC that is “manager-managed” under this definition does not cease to be so simply because the members fail to designate anyone to act as a manager. In that situation, absent additional facts, the LLC is manager-managed and the manager position is vacant. Non-manager members who exercise managerial functions during the vacancy (or at any other time) will have duties as determined by other law, most particularly the law of agency.

**Paragraph 10(A) and (B) [not adopted in Idaho]** — In these paragraphs, the phrases “manager-managed” and “managed by managers” are “magic words” — i.e., for either subparagraph to apply, the operating agreement must include precisely the required language. However, the word “expressly” does not mean “in writing” or “in a record.” This Act permits operating agreements to be oral (in whole or in part), and an oral provision of an operating agreement could contain the magic words. This Act also recognizes that provisions of an operating agreement may be reflected in patterns of conduct.

Oral and implied agreements invite memory problems and “swearing matches.” Section 110(a)(4) [§ 30-6-110(1)(d)] empowers the operating agreement to determine “the

means and conditions for the amending the operating agreement.”

**Paragraph 10(C) [not adopted in Idaho]** — In contrast to Paragraphs 10(A) and (B), this provision does not contain “magic words” and considers instead all terms of the operating agreement that expressly refer to management by managers.

**Paragraph 11 [(12)] Member** — After a person has been dissociated as a member, Section 602 [§ 30-6-602], the term “member” continues to apply to the person's conduct while a member. *See* Section 603(b) [§ 30-6-603(2)].

**Paragraph 12 [(13)] Member-managed limited liability company** — A limited liability company that does not effectively designate itself a manager-member limited liability company will operate, subject to any contrary provisions in the operating agreement, under statutory rules providing for management by the members. Section 407(a) [§ 30-6-407(1)]. For a discussion of potential confusion relating to the term “manager”, see the Comment to Paragraph 9 [(10)] (Manager).

**Paragraph (13) [(15)] [Operating Agreement]** — This definition must be read in conjunction with Sections 110 through 112 [§§ 30-6-110 through 30-6-112], which further describe the operating agreement. An operating agreement is a contract, and therefore all statutory language pertaining to the operating agreement must be understood in the context of the law of contracts.

The definition in Paragraph 13 [(15)] is very broad and recognizes a wide scope of authority for the operating agreement: “the matters described in Section 110(a) [§ 30-6-110(1)].” Those matters include not only all relations *inter se* the members and the limited liability company but also all “activities of the company and the conduct of those activities.” Section 110(a)(3) [§ 30-6-110(1)(c)]. Moreover, the definition puts no limits on the form of the operating agreement. To the contrary, the definition contains the phrase “whether oral, in a record, implied, or in any combination thereof”.

This Act states no rule as to whether the statute of frauds applies to an oral operating agreement. Case law suggests that an oral agreement to form a partnership or joint venture with a term exceeding one year is within the statute. *E.g. Abbott v. Hurst*, 643 So.2d 589, 592 (Ala. 1994) (“Partnership agreements, like other contracts, are subject to the Statute of Frauds. A contract of partnership for a term exceeding one year is within the Statute of Frauds and is void unless it is in writing; however, a contract establishing a partnership terminable at the will of any partner is generally held to be capable of performance by its terms within

one year of its making and, therefore, to be outside the Statute of Frauds.”) (citations omitted); *Pemberton v. Ladue Realty & Const. Co.*, 362 Mo. 768, 770-71, 244 S.W.2d 62, 64 (Mo. 1951) (rejecting plaintiff’s contention that mere part performance sufficed to take the oral agreement outside the statute and holding that partnership was therefore at will); *Ebker v. Tan Jay Int’l, Ltd.*, 739 F.2d 812, 827-28 (2d Cir. 1984) (same analysis with regard to a joint venture). However, it is not possible to form an LLC without someone signing and delivering to the filing officer a certificate of organization in record form, Section 201(a) [§ 30-6-201(1)], and the Act itself then establishes the LLC’s duration. Subject to the operating agreement, that duration is perpetual. Section 104(c) [§ 30-6-104(3)]. An oral provision of an operating agreement calling for performance that extends beyond a year might be within the one-year provision — e.g., an oral agreement that a particular member will serve (and be permitted to serve) as manager for three years.

An oral provision of an operating agreement which involves the transfer of land, whether by or to the LLC, might come within the land provision of the statute of frauds. *Froiseth v. Nowlin*, 156 Wash. 314, 316, 287 P. 55, 56 (Wash. 1930) (“[The land provision] applies to an oral contract to transfer or convey partnership real property, and the interest of the other partners therein, to one partner as an individual, as well as to a parol contract by one of the parties to convey certain land owned by him individually to the partnership, or to another partner, or to put it into the partnership stock.”) (quoting 27 CORPUS JURIS 220)).

In contrast, the fact that a limited liability company owns or deals in real property does not bring within the land provision agreements pertaining to the LLC’s membership interests. Interests in a limited liability company are personal property and reflect no direct interest in the entity’s assets. REULLCA §§ 501 & 102(21) [§§ 30-6-501 & 30-6-102(26)]. Thus, the real property issues pertaining to the LLC’s ownership of land do not “flow through” to the members and membership interests. See, e.g., *Wooten v. Marshall*, 153 F. Supp. 759, 763-764 (S.D. N.Y. 1957) (involving an “oral agreement for a joint venture concerning the purchase, exploitation and eventual disposition of this 160 acre tract” and stating “[t]he real property acquired and dealt with by the venturers takes on the character of personal property as between the partners in the enterprise, and hence is not covered by [the Statute of Frauds].”)

The operating agreement may comprise a number of separate documents (or records), however denominated, unless the operating

agreement itself provides otherwise. Section 110(a)(4) [§ 30-6-110(1)(d)]. Absent a contrary provision in the operating agreement, a threshold qualification for status as part of the “operating agreement” is the assent of all the persons then members. An agreement among less than all of the members might well be enforceable among those members as parties, but would not be part of the operating agreement.

An agreement to form an LLC is not itself an operating agreement. The term “operating agreement” presupposes the existence of members, and a person cannot have “member” status until the LLC exists. However, the Act’s very broad definition of “operating agreement” means that, as soon as a limited liability company has any members, the limited liability company has an operating agreement. For example, suppose: (i) two persons orally and informally agree to join their activities in some way through the mechanism of an LLC, (ii) they form the LLC or cause it to be formed, and (iii) without further ado or agreement, they become the LLC’s initial members. The LLC has an operating agreement. “[A]ll the members” have agreed on who the members are, and that agreement — no matter how informal or rudimentary — is an agreement “concerning the matters described in Section 110(a) [§ 30-6-110(1)].” (To the extent the agreement does not provide the *inter se* “rules of the game,” this Act “fills in the gaps.” Section 110(b) [§ 30-6-110(2)].)

The same result follows when a person becomes the sole initial member of an LLC. It is not plausible that the person would lack any understanding or intention with regard to the LLC. That understanding or intention constitutes an “agreement of all the members of the limited liability company, including a sole member.”

It may seem oxymoronic to refer an “agreement of ... a sole member,” but this approach is common in LLC statutes. See, e.g., ARIZ. REV. STAT. ANN. § 29-601 (14)(b) (2006) (defining operating agreement to mean “in the case of a limited liability company that has a single member, any written or oral statement of the member made in good faith”); COLO. REV. STAT. ANN. § 7-80-102 (11)(b)(I) (2006) (defining operating agreement to include, in the case of a single member LLC “[a]ny writing, without regard to whether such writing otherwise constitutes an agreement ... signed by the sole member”; N.H. REV. STAT. ANN. § 304-C:1 (VI) (2006) (defining limited liability company agreement to include “a document adopted by the sole member”); OR. REV. STAT. ANN. § 63.431(2) (2005) (vesting the “power to adopt, alter, amend or repeal an operating agreement of ... a single member limited liability company, in the sole member of the limited liability company”); R.I. GEN. LAWS



§ 7-16-2 (19) (2005) (stating that the term operating agreement “includes a document adopted by the sole member of a limited liability company that has only one member”); and WASH. REV. CODE ANN. § 25.15.005 (5) (2006) (defining limited liability company agreement to include “any written statement of the sole member”).

This re-definition of “agreement” is a function of “path dependence.” By the time single-member LLCs became widely accepted, almost all LLC statutes were premised on the LLC’s key organic document being the operating agreement. Because a key function of the operating agreement is to override statutory default rules, it was necessary to make clear that a sole member could make an operating agreement. Such an agreement may also be of interest to third parties, because the operating agreement binds the LLC. Section 111(a) [§ 30-6-111(1)].

In light of Paragraph 13’s [15’s] broad definition, it is possible to argue that any activity involving unanimous consent of the members becomes part of the operating agreement. For example, if pursuant to an operating agreement all the members consent to the redemption of one-half of the managing-member’s transferable interest, does that action constitute an addition to the agreement?

Typically, such questions will turn on the practical issue of whether the unanimous consent pertained solely to a single event (now past) or also to future circumstances (now in controversy) rather than on the semantic question of whether the operating agreement has been amended. Occasionally, however, the amendment *vel non* question could have practical import. For example, if the operating agreement entitles a non-member to approve (or veto) amendments, see Section 112(a) [§ 30-6-112(1)], the members and the non-member might see the matter quite differently.

Careful drafting of veto provisions can help avoid controversy — e.g., by defining with specificity the type of decisions subject to the veto. On the question of how far a written (or “in a record”) operating agreement can go to prevent oral or implied-in-fact terms, see Section 110(a)(4).

If it is necessary for a court to decide whether the contents of a matter approved by unanimous consent have become part of the operating agreement, the court should rely on principles of contract interpretation and look:

- first, at the manifestations of the members, including:

- the manifestations made to give the unanimous consent; and
- any terms of the operating agreement (e.g., terms specifying how matters become part of the operating agreement); and
- second, at whether, viewed from the perspective of a reasonable person in the position of the members giving consent, the consent was intended to incorporate the matter into the ongoing “rules of the game” or merely take some particular action as already permitted by those rules.

Of course, if all the members have the same understanding, the reasonableness *vel non* of that understanding is irrelevant and the shared meaning governs. See RESTATEMENT (SECOND) OF CONTRACTS, § 201(1) (1981).

**Paragraph (14) [(16)] Organizer** — If an LLC is to have one or more members when the filing officer files the certificate of organization, the organizer: (i) acts on behalf of the person or persons who will become the LLC’s initial members, Section 401(a) and (b) [§ 30-6-401(1) and (2)]; and (ii) has no function other than to compose, sign, and deliver to the filing officer for filing the certificate of organization. Section 201(a) [§ 30-6-201(1)]. If an LLC is to have its first member sometime after the filing officer files the certificate of organization, the organizer has the power to admit the initial member or members, Section 401(c) [§ 30-6-401(3)], and to sign and deliver for filing the notice of initial membership described in Section 201(e)(1) [§ 30-6-201(3)(a)]. Whether in this latter category of circumstances the organizer acts on behalf of the initial member or members is determined under ordinary principles of agency law and depends on the facts of each situation.

**Paragraph (20) [(25)] Transfer** — The reference to “transfer by operation of law” is significant in connection with Section 502 [§ 30-6-502] (Transfer of Transferable Interest). That section severely restricts a transferee’s rights (absent the consent of the members), and this definition makes those restrictions applicable, for example, to transfers ordered by a family court as part of a divorce proceeding and transfers resulting from the death of a member. The restrictions also apply to transfers in the context of a member’s bankruptcy, except to the extent that bankruptcy law supersedes this Act.

**Paragraph (21) [(27)] Transferee** — “Transferee” has displaced “assignee” as the Conference’s term of art.

## IDAHO REPORTER’S COMMENT

The definitions for “allied professional services,” “membership” or “membership interest,” “professional company,” “professional service,” and “registered agent” are Idaho additions to RULLCA.



**30-6-103. Knowledge — Notice.** — (1) A person knows a fact when the person:

- (a) Has actual knowledge of it; or
- (b) Is deemed to know it under subsection (4)(a) of this section or law other than this chapter.

(2) A person has notice of a fact when the person:

- (a) Has reason to know the fact from all of the facts known to the person at the time in question; or
- (b) Is deemed to have notice of the fact under subsection (4)(b) of this section;

(3) A person notifies another of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.

(4) A person that is not a member is deemed:

(a) To know of a limitation on authority to transfer real property as provided in section 30-6-302(7), Idaho Code; and

(b) To have notice of a limited liability company's:

(i) Dissolution, ninety (90) days after a statement of dissolution under section 30-6-702(2)(b)(i), Idaho Code, becomes effective;

(ii) Termination, ninety (90) days after a statement of termination under section 30-6-702(2)(b)(vi), Idaho Code, becomes effective; and

(iii) Merger, conversion or domestication, ninety (90) days after articles of merger, conversion or domestication under part 10 of this chapter become effective.

#### **History.**

I.C., § 30-6-103, as added by 2008, ch. 176, § 1, p. 482.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

### **OFFICIAL COMMENT**

This section is substantially slimmer than the corresponding provisions of previous uniform acts pertaining to business organizations (RUPA, ULLCA, and ULPA (2001)). Each of those acts borrowed heavily from the comparable UCC provisions. For the most part, this Act relies instead on generally applicable principles of agency law, and therefore this section is mostly confined to rules specifically tailored to this Act.

Several facets of this section warrant particular note. First, and most fundamentally, because this Act does not provide for "statutory apparent authority," see Section 301 [§ 30-6-301], this section contains no special rules for attributing to an LLC information possessed, communicated to, or communicated by a member or manager.

Second, the section contains no generally applicable provisions determining when an organization is charged with knowledge or notice, because those imputation rules: (i)

comprise core topics within the law of agency; (ii) are very complicated; (iii) should not have any different content under this Act than in other circumstances; and (iv) are the subject of considerable attention in the new Restatement (Third) of Agency.

Third, this Act does not define "notice" to include "knowledge." Although conceptualizing the latter as giving the former makes logical sense and has a long pedigree, that conceptualization is counter-intuitive for the non-*aficionado*. In ordinary usage, notice has a meaning separate from knowledge. This Act follows ordinary usage and therefore contains some references to "knowledge or notice."

**Subsection (a)(2) [(1)(b)]** — In this context, the most important source of "law other than this chapter" is the common law of agency.

**Subsection (b)(1) [(2)(a)]** — The "facts known to the person at the time in question" include facts the person is deemed to know under subsection (a)(2) [(1)(b)].

**Subsection (d)(2) [(4)(b)]** — Under this Act, the power to bind a limited liability company to a third party is primarily a matter of agency law. Section 301 [§ 30-6-301], Comment. The constructive notice provided

under this paragraph will be relevant if a third party makes a claim under agency law that someone who purported to act on behalf of a limited liability company had the apparent authority to do so.

**30-6-104. Nature, purpose and duration of limited liability company.** — (1) A limited liability company is an entity distinct from its members.

(2) A limited liability company may have any lawful purpose.

(3) A limited liability company has perpetual duration.

(4) A limited liability company may have one (1) or more members.

**History.**

I.C., § 30-6-104, as added by 2008, ch. 176, § 1, p. 483.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**Entity Distinct.**

As a separate legal entity, affirmative de-

fenses regarding the misconduct of a limited liability company's member are inapplicable against the company, unless the claimant demonstrates that the company is actually the alter ego of the member. To prove that a company is the alter ego of a member of the company, a claimant must demonstrate (1) a unity of interest and ownership to a degree that the separate personalities of the company and individual no longer exist and (2) if the acts are treated as acts of the company, an inequitable result would follow. *Sirius LC v. Erickson*, 150 Idaho 80, 244 P.3d 224 (2010).

**OFFICIAL COMMENT**

**Subsection (a) [(1)]** — The “separate entity” characteristic is fundamental to a limited liability company and is inextricably connected to both the liability shield, Section 304 [§ 30-6-304], and the charging order provision, Section 503 [§ 30-6-503].

**Subsection (b) [(2)]** — The phrase “any lawful purpose, [regardless of whether for profit]” means that: (i) a limited liability company need not have any business purpose; and (ii) the issue of profit *vel non* is irrelevant to the question of whether a limited liability company has been validly formed. Although some LLC statutes continue to require a business purpose, this Act follows the current trend and takes a more expansive approach.

The expansive approach comports both with the original ULLCA and with ULPA (2001). See ULLCA §§ 112(a) (captioned with reference to “Nature of Business” and permitting “any lawful purpose, subject to any law of this State governing or regulating business”) and 101(3) (defining “Business” as including “every trade, occupation, profession, and other lawful purpose, whether or not carried on for profit”); ULPA (2001) § 104(b) (permitting a limited partnership to be organized for any “lawful” purpose). Compare UPA § 6 (defining a general partnership as organized for profit), RUPA § 101(6) (same), and RULPA (1976/85) § 106 (delineating the “Nature of [a limited partnership’s] Business” by linking

back to “any business that a partnership without limited partners may carry on”).

The subsection does not bar a limited liability company from being organized to carry on charitable activities, and this act does not include any protective provisions pertaining to charitable purposes. Those protections must be (and typically are) found in other law, although sometimes that “other law” appears within a state’s non-profit corporation statute. See, e.g., MINN. STAT. § 317A.811 (2006) (providing restrictions on charitable organizations that seek to “dissolve, merge, or consolidate, or to transfer all or substantially all of their assets” but imposing those restrictions only on “corporations,” which are elsewhere defined as corporations incorporated under the non-profit corporation act).

**Subsection (c) [(3)]** — In this context, the word “perpetual” is a misnomer, albeit one commonplace in LLC statutes. Like all current LLC statutes, this Act provides several consent-based avenues to override perpetuity: a term specified in the operating agreement; an event specified in the operating agreement; member consent. Section 701 [§ 30-6-701] (events causing dissolution). In this context, “perpetuity” actually means that the Act does not require a definite term and creates no nexus between the dissociation of a member and the dissolution of the entity. (The dissociation of an LLC’s last remaining mem-

ber does threaten dissolution. Section 701(a)(3) [§ 30-6-7-1(1)(c)] (stating, as a default rule, that a limited liability company dissolves “upon ... the passage of 90 consecutive days during which the company has no members”).

An operating agreement is not a publicly-filed document, which means that the public record pertaining to a limited liability company will not necessarily reveal whether a limited liability company actually has a perpetual duration. *Accord* ULPA (2001) § 104,

comment to subsection (c) (“The partnership agreement has the power to vary this subsection [which provides for perpetual duration], either by stating a definite term or by specifying an event or events which cause dissolution.... [The limited partnership act] also recognizes several other occurrences that cause dissolution. Thus, the public record pertaining to a limited partnership will not necessarily reveal whether the limited partnership actually has a perpetual duration.”)

### IDAHO REPORTER'S COMMENT

**Subsection (2)** — RULLCA includes the phrase: “... any lawful purpose, regardless of whether for profit”. By striking the phrase “... regardless of whether for profit.” in the Idaho Act, no implication is intended as to whether an Idaho limited liability company may or may not be organized without a business purpose or not-for-profit.

**30-6-105. Powers.** — A limited liability company has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities including, in the case of a professional company formed under this chapter, the power to render professional services.

**History.**

I.C., § 30-6-105, as added by 2008, ch. 176, § 1, p. 483.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

### OFFICIAL COMMENT

Following ULPA (2001), § 105, this Act omits as unnecessary any detailed list of specific powers. *Compare* ULLCA § 112 (containing a detailed list).

The capacity to sue and be sued is mentioned specifically so that Section 110(c)(1) [§ 30-6-110(3)(a)] can prohibit the operating

agreement from varying that capacity. An LLC's standing to enforce the operating agreement is a separate matter, which is covered by Section 111(a) [§ 30-6-111(1)] (stating, as a default rule, that the limited liability company “may enforce the operating agreement”).

**30-6-106. Governing law.** — The law of this state governs:

- (1) The internal affairs of a limited liability company; and
- (2) The liability of a member as member and a manager as manager for the debts, obligations or other liabilities of a limited liability company.

**History.**

I.C., § 30-6-106, as added by 2008, ch. 176, § 1, p. 483.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

### OFFICIAL COMMENT

**Paragraph (1)** — Like any other legal concept, “internal affairs” may be indeterminate at its edges. However, the concept cer-

tainly includes interpretation and enforcement of the operating agreement, relations among the members as members; relations



between the limited liability company and a member as a member, relations between a manager-managed limited liability company and a manager, and relations between a manager of a manager-managed limited liability company and the members as members. *Compare* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 302, cmt. a (defining “internal affairs” with reference to a corporation as “the relations internal to the corporation, its shareholders, directors, officers or agents”).

The operating agreement cannot alter this provision. Section 110(c)(2) [§ 30-6-110(3)(b)]. However, an operating agreement may lawfully incorporate by reference the provisions of another state’s LLC statute. If done correctly, this incorporation makes the foreign statutory language part of the operating agreement, and the incorporated terms (together with the rest of the operating agreement) then govern the members (and those claiming through the members) to the extent not prohibited by this Act. *See* Section 110 [§ 30-6-110]. This approach does not switch the limited liability company’s governing law to that of another state, but instead takes the provisions of another state’s law and incorporates them by reference into the contract among the members.

**Paragraph (2)** — This paragraph certainly encompasses Section 304 [§ 30-6-304] (the liability shield) but does not necessarily

encompass a claim that a member or manager is liable to a third party for (i) having purported to bind a limited liability company to the third party; or (ii) having committed a tort against the third party while acting on the limited liability company’s behalf or in the course of the company’s business. That liability is not by status (i.e., not “as member ... [or] as manager”) but rather results from function or conduct. Contrast Section 301(b) [§ 30-6-301(2)] (stating that, although this Act does not make a member as member the agent of a limited liability company, other law may make an LLC liable for the conduct of a member).

This paragraph is stated separately from Paragraph (1), because it can be argued that the liability of members and managers to third parties is not an internal affair. *See, e.g.,* RESTATEMENT (SECOND) OF CONFLICT OF LAWS, § 307 (treating shareholders’ liability separately from the internal affairs doctrine). A few cases subsume owner/manager liability into internal affairs, but many do not. *See, e.g., Kalb, Voorhis & Co. v. American Fin. Corp.*, 8 F.3d 130, 132 (2nd Cir. 1993). In any event, the rule stated in this paragraph is correct. All sensible authorities agree that, except in extraordinary circumstances, “shield-related” issues should be determined according to the law of the state of organization.

**30-6-107. Supplemental principles of law.** — Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

**History.**

I.C., § 30-6-107, as added by 2008, ch. 176, § 1, p. 483.

**Compiler’s Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. *See* § 30-6-1104.

**30-6-108. Name.** — (1) The name of a limited liability company must contain the words “limited liability company” or “limited company” or the abbreviation “L.L.C.,” “LLC,” “L.C.,” or “LC.” “Limited” may be abbreviated as “ltd.” and “company” may be abbreviated as “co.” If the limited liability company is a professional company, however, the name of the limited liability company must contain the words “professional company” or the abbreviations “P.L.L.C.” or “PLLC.”

(2) The name of a limited liability company may not contain language falsely stating or implying government affiliation.

(3) Unless authorized by subsection (4) of this section, the name of a limited liability company must be distinguishable on the records of the secretary of state from:

- (a) The name of each person that is not an individual and that is incorporated, organized or authorized to transact business in this state;
- (b) The limited liability company name stated in each certificate of

organization that contains the statement as provided in section 30-6-201(2)(c), Idaho Code, and that has not lapsed; and

(c) Each name reserved under section 30-6-109, Idaho Code, and sections 30-1-402 and 30-1-403, Idaho Code, sections 30-3-28 and 30-3-29, Idaho Code, and section 53-2-109, Idaho Code.

(4) A limited liability company may apply to the secretary of state for authorization to use a name that does not comply with subsection (3) of this section. The secretary of state shall authorize use of the name applied for if, as to each noncomplying name:

(a) The present user, registrant or owner of the noncomplying name consents in a signed record to the use and submits an undertaking in a form satisfactory to the secretary of state to change the noncomplying name to a name that complies with subsection (3) of this section and is distinguishable in the records of the secretary of state from the name applied for; or

(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court establishing the applicant's right to use in this state the name applied for.

(5) Subject to section 30-6-805, Idaho Code, this section applies to a foreign limited liability company transacting business in this state which has a certificate of authority to transact business in this state or which has applied for a certificate of authority.

#### **History.**

I.C., § 30-6-108, as added by 2008, ch. 176, § 1, p. 483; am. 2012, ch. 184, § 1, p. 487.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53,

Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

The 2012 amendment, by ch. 184, added subsection (2), renumbered the subsequent subsections, and adjusted internal references accordingly.

Section 3 of S.L. 2012, ch. 184 declared an emergency. Approved March 29, 2012.

### **OFFICIAL COMMENT**

Subsection (a) [(1)] is taken verbatim from ULLCA § 105(a). Except for subsection (b)(2) [(3)(b)], the rest of the section is taken from ULPA (2001) § 108.

**Subsection (b)(2) [(3)(b)]** — This language is necessary to protect a name con-

tained in a filed certificate of organization that has not become effective because there are no members. If a statement of membership is not thereafter timely filed, "the certificate lapses and is void," thereby freeing the name. Section 201(e)(1).

**30-6-109. Reservation of name.** — (1) A person may reserve the exclusive use of the name of a limited liability company, including a fictitious or assumed name for a foreign limited liability company whose name is not available, by delivering an application to the secretary of state for filing. The application must state the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the name applied for is available, it must be reserved for the applicant's exclusive use for a four (4) month period.

(2) The owner of a name reserved for a limited liability company may transfer the reservation to another person by delivering to the secretary of

state for filing a signed notice of the transfer which states the name and address of the transferee.

**History.**

I.C., § 30-6-109, as added by 2008, ch. 176, § 1, p. 484.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**OFFICIAL COMMENT**

**Source:** ULLCA, § 106.

**Subsection (a) [(1)]** — Although 120-day [four (4) month] reservation period is non-

renewable, this subsection does not prevent a person from seeking successive 120-day [four 4 month] periods of reservation.

**30-6-110. Operating agreement — Scope, function and limitations.** — (1) Except as otherwise provided in subsections (2) and (3) of this section, the operating agreement governs:

- (a) Relations among the members as members and between the members and the limited liability company;
- (b) The rights and duties under this chapter of a person in the capacity of manager;
- (c) The activities of the company and the conduct of those activities; and
- (d) The means and conditions for amending the operating agreement.

(2) To the extent the operating agreement does not otherwise provide for a matter described in subsection (1) of this section, this chapter governs the matter.

(3) An operating agreement may not:

- (a) Vary a limited liability company's capacity under section 30-6-105, Idaho Code, to sue and be sued in its own name;
- (b) Vary the law applicable under section 30-6-106, Idaho Code;
- (c) Vary the power of the court under section 30-6-204, Idaho Code;
- (d) Subject to subsections (4) through (7) of this section, eliminate the duty of loyalty, the duty of care, or any other fiduciary duty;
- (e) Subject to subsections (4) through (7) of this section, eliminate the contractual obligation of good faith and fair dealing under section 30-6-409(4), Idaho Code;
- (f) Unreasonably restrict the duties and rights stated in section 30-6-410, Idaho Code;
- (g) Vary the power of a court to decree dissolution in the circumstances specified in sections 30-6-701(1)(d) and (e), Idaho Code;
- (h) Vary the requirement to wind up a limited liability company's business as specified in sections 30-6-702(1) and (2)(a), Idaho Code;
- (i) Unreasonably restrict the right of a member to maintain an action under part 9 of this chapter;
- (j) Restrict the right to approve a merger, conversion or domestication under chapter 18, title 30, Idaho Code, to a member that will have personal liability with respect to a surviving, converted or domesticated organization; or
- (k) Except as otherwise provided in section 30-6-112(2), Idaho Code,



restrict the rights under this chapter of a person other than a member or manager.

(4) If not manifestly unreasonable, the operating agreement may:

(a) Restrict or eliminate the duty:

(i) As required in sections 30-6-409(2)(a) and (7), Idaho Code, to account to the limited liability company and to hold as trustee for it any property, profit or benefit derived by the member in the conduct or winding up of the company's business, from a use by the member of the company's property, or from the appropriation of a limited liability company opportunity;

(ii) As required in sections 30-6-409(2)(b) and (7), Idaho Code, to refrain from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company; and

(iii) As required by sections 30-6-409(2)(c) and (7), Idaho Code, to refrain from competing with the company in the conduct of the company's business before the dissolution of the company;

(b) Identify specific types or categories of activities that do not violate the duty of loyalty;

(c) Alter the duty of care, except to authorize intentional misconduct or knowing violation of law;

(d) Alter any other fiduciary duty, including eliminating particular aspects of that duty; and

(e) Prescribe the standards by which to measure the performance of the contractual obligation of good faith and fair dealing under section 30-6-409(4), Idaho Code.

(5) The operating agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one (1) or more disinterested and independent persons after full disclosure of all material facts.

(6) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member would otherwise have under this chapter and imposes the responsibility on one (1) or more other members, the operating agreement may, to the benefit of the member that the operating agreement relieves of the responsibility, also eliminate or limit any fiduciary duty that would have pertained to the responsibility.

(7) The operating agreement may alter or eliminate the indemnification for a member or manager provided by section 30-6-408(1), Idaho Code, and may eliminate or limit a member or manager's liability to the limited liability company and members for money damages, except for:

(a) Breach of the duty of loyalty;

(b) A financial benefit received by the member or manager to which the member or manager is not entitled;

(c) A breach of a duty under section 30-6-406, Idaho Code;

(d) Intentional infliction of harm on the company or a member; or

(e) An intentional violation of criminal law.

(8) The court shall decide any claim, under subsection (4)(a) of this

section, that a term of an operating agreement is manifestly unreasonable. The court:

- (a) Shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and
- (b) May invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that:
  - (i) The objective of the term is unreasonable; or
  - (ii) The term is an unreasonable means to achieve the provision’s objective.

**History.**  
I.C., § 30-6-110, as added by 2008, ch. 176,  
§ 1, p. 484.  
**Compiler’s Notes.** Section 6 of S.L. 2008,  
ch. 176 provided that the enactment of this

section should take effect on and after July 1,  
2008 and that the repeal of the former Idaho  
Limited Liability Act, chapter 6, title 53,  
Idaho Code, should take effect on or after July  
1, 2010. See § 30-6-1104.

OFFICIAL COMMENT

The operating agreement is pivotal to a limited liability company, and Sections 110 through 112 [§§ 30-6-110 through 30-6-112] are pivotal to this Act. They must be read together, along with Section 102(13) [§ 30-6-102(15)] (defining the operating agreement). One of the most complex questions in the

law of unincorporated business organizations is the extent to which an agreement among the organization’s owners can affect the law of fiduciary duty. This section gives special attention to that question and is organized as follows:

Subsection (a) [(1)]	grants broad, <i>general</i> authority to the operating agreement
Subsection (b) [(2)]	establishes this Act as comprising the “default rules” (“gap fillers”) for matters within the purview of the operating agreement but not addressed by the operating agreement
Subsection (c) [(3)]	states restrictions on the power of the operating agreement, especially but not exclusively with regard to fiduciary duties and the contractual obligation of good faith
Subsection (d) [(4)]	contains <i>specific</i> grants of authority for the operating agreement with regard to fiduciary duty and the contractual obligation of good faith; expressed so as to state restrictions on those specific grants — including the “if not manifestly unreasonable” standard
Subsection (e) [(5)]	specifically grants the operating agreement the power to provide mechanisms for approving or ratifying conduct that would otherwise violate the duty of loyalty; expressed so as to state restrictions on those mechanism — full disclosure and disinterested and independent decision makers
Subsection (f) [(6)]	specifically authorizes the operating agreement to divest a member of fiduciary duty with regard to a matter if the operating agreement is also divesting the person of responsibility for the matter (and imposing that responsibility on one or more other

Subsection (g) [(7)]

members)  
contains *specific* grants of authority for the operating agreement with regard to indemnification and exculpatory provisions; expressed so as to state restrictions on those specific grants provides rules for applying the “not manifestly unreasonable” standard established by subsection (d)

Subsection (h) [(8)]

A limited liability company is as much a creature of contract as of statute, and Section 102(13) [§ 30-6-102(15)] delineates a very broad scope for “operating agreement.” As a result, once an LLC comes into existence and has a member, the LLC necessarily has an operating agreement. *See* Comment to Section 102(13) [§ 30-6-102(15)]. Accordingly, this Act refers to “the operating agreement” rather than “an operating agreement.”

This phrasing should not, however, be read to require a limited liability company or its members to take any formal action to adopt an operating agreement. *Compare* CAL. CORP. CODE § 17050(a) (2006) (“In order to form a limited liability company, one or more persons shall execute and file articles of organization with, and on a form prescribed by, the Secretary of State and, either before or after the filing of articles of organization, the members shall have entered into an operating agreement.”)

The operating agreement is the exclusive consensual process for modifying this Act’s various default rules pertaining to relationships *inter se* the members and between the members and the limited liability company. Section 110(b) [§ 30-6-110(2)]. The operating agreement also has power over “the rights and duties under this [act] of a person in the capacity of manager,” subsection (a)(2) [(1)(b)], and “the obligations of a limited liability company and its members to a person in the person’s capacity as a transferee or dissociated member.” Section 112(b) [§ 30-6-112(2)].

**Subsection (a) [(1)]** — This section describes the very broad scope of a limited liability company’s operating agreement, which includes all matters constituting “internal affairs.” *Compare* Section 106(1) [§ 30-6-106(1)] (using the phrase “internal affairs” in stating a choice of law rule). This broad grant of authority is subject to the restrictions stated in subsection (c) [(3)], including the broad restriction stated in paragraph (c)(11) [(3)(k)] (concerning the rights under this Act of third parties).

**Subsection (a)(1) [(1)(a)]** — Under this Act, a limited liability company is emphatically an entity, and the members lack the power to alter that characteristic.

**Subsection (a)(2) [(1)(b)]** — Under this paragraph, the operating agreement has the

power to affect the rights and duties of managers (including non-member managers). Because the term “[o]perating agreement ... includes the agreement as amended or restated,” Section 102(13) [§ 30-6-102(15)], this paragraph gives the members the ongoing power to define the role of an LLC’s managers. Power is not the same as right, however, and exercising the power provided by this paragraph might constitute a breach of a separate contract between the LLC and the manager. A non-member manager might also have rights under Section 112(a) § 30-6-112(1)].

**Subsection (a)(4) [(1)(d)]** — If the operating agreement does not address this matter, under subsection (b) [(2)] this Act provides the rule. The rule appears in Section 407(b)(5) [§ 30-6-407(2)(e)] and 407(c)(4)(D) [§ 30-6-407(3)(d)(iv)] (unanimous consent).

This Act does not specially authorize the operating agreement to limit the sources in which terms of the operating agreement might be found or limit amendments to specified modes (e.g., prohibiting modifications except when consented to in writing). *Compare* UCC § 2-209(2) (authorizing such prohibitions in a “signed agreement” for the sale of goods). However, this Paragraph (a)(4) [(1)(d)] could be read to encompass such authorization. Also, under Section 107 [§ 30-6-107] the parol evidence rule will apply to a written operating agreement containing an appropriate merger provision.

**Subsection (c) [(3)]** — If a person claims that a term of the operating agreement violates this subsection, as a matter of ordinary procedural law the burden is on the person making the claim.

**Subsection (c)(4) [(3)(d)]** — This limitation is less powerful than might first appear, because subsections (d) through (g) [(4) through (7)] specifically authorize significantly alterations to fiduciary duty. The reference to “or any other fiduciary duty” is necessary because the Act has “un-cabined” fiduciary duty. *See* Comment to Section 409 [§ 30-6-409].

**Subsection (c)(9) [(3)(i)]** — Arbitration and forum selection provisions are commonplace in business agreements, and this paragraph’s restrictions do not reflect any special hostility to or skepticism of such provisions.



**Subsection (c)(10) [(3)(j)]** — Under Section 1014 [§ 30-6-1002]:

- each member is protected from being merged, converted, or domesticated “into” the status of an unshielded general partner (or comparable position) without the member having *directly* consented to either:
  - the merger, conversion, or domestication; or
  - an operating agreement provision that permits such transactions to occur with less than unanimous consent of the members; and
- merely consenting to an operating agreement provision that permits amendment of the operating agreement with less than unanimous consent of the members does not qualify as the requisite direct consent.

The sole function of subsection (c)(10) [(3)(j)] is to protect Section 1014 [§ 30-6-1002] by denying the operating agreement the power to restrict or otherwise undercut the protections of Section 1014 [§ 30-6-1002].

**Subsection (c)(11) [(3)(k)]** — This limitation pertains only to “the rights under this chapter of” third parties. The extent to which an operating agreement can affect other rights of third parties is a question for other law, particularly the law of contracts.

**Subsection (d) [(4)]** — Delaware recently amended its LLC statute to permit an operating agreement to fully “eliminate” fiduciary duty within an LLC. This Act rejects the ultra-contractarian notion that fiduciary duty within a business organization is merely a set of default rule and seeks instead to balance the virtues of “freedom of contract” against the dangers that inescapably exist when some have power over the interests of others. As one source has explained:

The open-ended nature of fiduciary duty reflects the law’s long-standing recognition that devious people can smell a loophole a mile away. For centuries, the law has assumed that (1) power creates opportunities for abuse and (2) the devious creativity of those in power may outstrip the prescience of those trying, through *ex ante* contract drafting, to constrain that combination of power and creativity.

CARTER G. BISHOP AND DANIEL S. KLEINBERGER, LIMITED LIABILITY COMPANIES: TAX AND BUSINESS LAW, ¶ 14.05[4][a][ii]

Subsection (h) [(8)] contains rules for applying the “not manifestly unreasonable” standard.

**Subsection (d)(1) [(4)(a)]** — Subject to the “not manifestly unreasonable” standard, this paragraph empowers the operating agreement to eliminate all aspects of the duty of loyalty listed in Section 409 [§ 30-6-409]. The contractual obligation of good faith would remain, see subsections (c)(5) and (d)(5) [(3)(e) and (4)(e)], as would any other, uncoded aspects of the duty of loyalty. *See* Comment to Section 409 [§ 30-6-409] decision to “uncabin” fiduciary duty). *See also* subsection (d)(4) [(4)(d)] (empowering the operating agreement to “alter any other fiduciary duty, including eliminating particular aspects of that duty”).

**Subsection (d)(3) [(4)(c)]** — The operating agreement’s power to affect this Act’s duty of care both parallels and differs from the agreement’s power to affect this Act’s duty of loyalty as well as any other fiduciary duties not codified in the statute. With regard to all fiduciary duties, the operating agreement is subject to the “manifestly unreasonable” standard. The differences concern: (i) the extent of the operating agreement’s power to restrict the duty; and (ii) the power of the operating agreement to provide indemnity or exculpation for persons subject to the duty.

duty	extent of operating agreement's power to restrict the duty (subject to the "manifestly unreasonable" standard) Section 110(d)(1), (3) and (4) [§ 30-6-110(4)(a), (c) and (d)]	power of the operating agreement to provide indemnity or exculpation w/r/t breach of the duty Section 110(g) [§ 30-6-110(7)]
loyalty	restrict or completely eliminate	none
care	alter, but not eliminate; specifically may not authorize intentional misconduct or knowing violation of law	complete
other fiduciary duties, not codified in the statute	restrict or completely eliminate Section 110(4) [§ 30-6-110(4)]	complete

**Subsection (e) [(5)]** — Section 409(f) [§ 30-6-409(6)] states the Act’s default rule for authorization or ratification — unanimous consent. This subsection specifically empowers the operating agreement to provide alternate mechanisms but, in doing so, imposes significant restrictions — namely, any alternate mechanism must involve full disclosure to, and the disinterestedness and indepen-

dence of, the decision makers. These restrictions are consonant with ordinary notions of authorization and ratification.

This Act provides four separate methods through which those with management power in a limited liability company can proceed with conduct that would otherwise violate the duty of loyalty:

Method	Statutory Authority
The operating agreement might eliminate the duty or otherwise permit the conduct, without need for further authorization or ratification.	Section 110(d)(1) and (2) [§ 30-6-110(4)(a) and (b)]
The conduct might be authorized or ratified by all the members after full disclosure.	Section 409(f) [§ 30-6-409(6)]
The operating agreement might establish a mechanism other than the informed consent for authorizing or ratifying the conduct.	Section 110(e) [§ 30-6-110(5)]
In the case of self-dealing the conduct might be successfully defended as being or having been fair to the limited liability company.	Section 409(e) [§ 30-6-409(5)]

**Subsection (f) [(6)]** — This subsection is intended to make clear that — regardless of the strictures stated elsewhere in this section — in the specified circumstances the operating agreement can entirely strip away the pertinent fiduciary duties.

**Subsection (g) [(7)]** This subsection specifically empowers the operating agreement to address matters of indemnification and exculpation but subjects that power to stated

limitations. Those limitations are drawn from the raft of exculpatory provisions that sprung up in corporate statutes in response to *Smith v. Van Gorkom*, 488 A.2d 858 (Del. 1985). Delaware led the response with DEL. CODE ANN. tit. 8, § 102(b)(7) (2006), and a number of LLC statutes have similar provisions. *E.g.* VA. CODE ANN. § 14-11-305(4)(A) (2006); IDAHO CODE ANN. § 53-624(1) (2006). For an extreme example, see VA. CODE ANN. § 13.1-1025 (2006)

(establishing limits of monetary liability as the default rule).

The restrictions stated in paragraphs (1) through (5) [(a) through (e)] apply both to indemnification and exculpation. The power to “alter or eliminate the indemnification ... provided by Section 30-6-408(1)” includes the power to expand or reduce that indemnification.

**Subsection (g)(4) [(7)(d)]** — Due to this paragraph, an exculpatory provision cannot shield against a member’s claim of oppression. See Section 701(a)(5)(B) and (b) [§ 30-6-701(1)(e)(ii) and (2)].

**Subsection (h) [(8)]** — The “not manifestly unreasonable standard” became part of uniform business entity statutes when RUPA imported the concept from the Uniform Commercial Code. This subsection provides rules for applying that standard, which are necessary because:

- Determining unreasonableness *inter se* owners of an organization is a different task than doing so in a commercial context, where concepts like “usages of trade” are available to inform the analysis. Each business organization must be understood in its own terms and context.
- If loosely applied, the standard would permit a court to rewrite the members’ agreement, which would destroy the balance this Act seeks to establish between freedom of contract and fiduciary duty.
- Case law research indicates that courts have tended to disregard the significance of the word “manifestly.”
- Some decisions have considered reasonableness as of the time of the complaint, which means that a prospectively reasonable allocation of risk could be overturned because it functioned as agreed.

If a person claims that a term of the operating agreement is manifestly unreasonable under subsections (d) and (h) [(4) and (8)], as a matter of ordinary procedural law the burden is on the person making the claim.

**Subsection (h)(1) [(8)(a)]** — The significance of the phrase “as of the time the challenged term became part of the operating agreement” is best shown by example.

**EXAMPLE:** An LLC’s operating agreement as initially adopted includes a provision subjecting a matter to “the manager’s sole, reasonable discretion.” A year later, the agreement is amended to delete the word “reasonable.” Later, a member claims that, without the word “reasonable,” the provision is manifestly unreasonable. The relevant time under subsection (h)(1) [(8)(a)] is when the agreement was amended, not when the agreement was initially adopted. **EXAMPLE:** When a particular manager-managed LLC comes into existence, its business plan is quite unusual and its success depends on the willingness of a particular individual to serve as the LLC’s sole manager. This individual has a rare combination of skills, experiences, and contacts, which are particularly appropriate for the LLC’s start-up. In order to induce the individual to accept the position of sole manager, the members are willing to have the operating agreement significantly limit the manager’s fiduciary duties. Several years later, when the LLC’s operations have turned prosaic and the manager’s talents and background are not nearly so crucial, a member challenges the fiduciary duty limitations as manifestly unreasonable. The relevant time under subsection (h)(1) [(8)(a)] is when the LLC began. Subsequent developments are not relevant, except as they might inferentially bear on the circumstances in existence at the relevant time.

### **30-6-111. Operating agreement — Effect on limited liability company and persons becoming members — Preformation agreement.**

— (1) A limited liability company is bound by and may enforce the operating agreement, whether or not the company has itself manifested assent to the operating agreement.

(2) A person that becomes a member of a limited liability company is deemed to assent to the operating agreement.

(3) Two (2) or more persons intending to become the initial members of a limited liability company may make an agreement providing that upon the formation of the company the agreement will become the operating agreement. One (1) person intending to become the initial member of a limited liability company may assent to terms providing that upon the formation of the company the terms will become the operating agreement.



**History.**

I.C., § 30-6-111, as added by 2008, ch. 176, § 1, p. 486.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**OFFICIAL COMMENT**

**Subsection (a) [(1)]** — This subsection does not consider whether a limited liability company is an indispensable party to a suit concerning the operating agreement. That is a question of procedural law, which can determine whether federal diversity jurisdiction exists.

**Subsection (b) [(2)]** — Given the possibility of oral and implied-in-fact components to the operating agreement, see Comment to Section 110(a)(4) [§ 30-6-110(1)(d)], a person becoming a member of an existing limited liability company should take precautions to ascertain fully the contents of the operating agreement.

**Subsection (c) [(3)]** — The second sentence refers to “assent to terms” rather than “make an agreement” because, under venerable principles of contract law, an agreement presupposes at least two parties. This Act specifically defines the operating agreement to include a sole member, Section 102(13) [§ 30-6-102(15)], but a preformation arrangement is not an operating agreement. An operating agreement is among “members,” and, under this Act, the earliest a person can become a member is upon the formation of the limited liability company. Section 401 [§ 30-6-401].

**30-6-112. Operating agreement — Effect on third parties and relationship to records effective on behalf of limited liability company.** — (1) An operating agreement may specify that its amendment requires the approval of a person that is not a party to the operating agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(2) The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or dissociated member are governed by the operating agreement. Subject only to any court order issued under section 30-6-503(2)(b), Idaho Code, to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or dissociated member is effective with regard to any debt, obligation or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or dissociated member.

(3) If a record that has been delivered by a limited liability company to the secretary of state for filing and has become effective under this chapter contains a provision that would be ineffective under section 30-6-110(3), Idaho Code, if contained in the operating agreement, the provision is likewise ineffective in the record.

(4) Subject to subsection (3) of this section, if a record that has been delivered by a limited liability company to the secretary of state for filing and has become effective under this chapter conflicts with a provision of the operating agreement:

- (a) The operating agreement prevails as to members, dissociated members, transferees and managers; and
- (b) The record prevails as to other persons to the extent they reasonably rely on the record.

**History.**

I.C., § 30-6-112, as added by 2008, ch. 176, § 1, p. 486.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**Fiduciary Duties.**

Members of an LLC owe one another the fiduciary duties of trust and loyalty. *Bushi v. Sage Health Care, PLLC*, 146 Idaho 764, 203 P.3d 694 (2009).

Whether a fiduciary has breached his duties of trust and loyalty is a question of fact. *Bushi v. Sage Health Care, PLLC*, 146 Idaho 764, 203 P.3d 694 (2009).

**OFFICIAL COMMENT**

**Subsection (a) [(1)]** — This subsection, derived from DEL. CODE ANN. tit. 6, § 18-302(e), permits a non-member to have veto rights over amendments to the operating agreement. Such veto rights are likely to be sought by lenders but may also be attractive to non-member managers.

**EXAMPLE:** A non-member manager enters into a management contract with the LLC, and that agreement provides in part that the LLC may remove the manager without cause only with the consent of members holding 2/3 of the profits interests. The operating agreement contains a parallel provision, but the non-member manager is not a party to the operating agreement. Later the LLC members amend the operating agreement to change the quantum to a simple majority and thereafter purport to remove the manager without cause. Although the LLC has undoubtedly breached its contract with the manager and subjected itself to a damage claim, the LLC has the power under Section 110(a)(2) [§ 30-6-110(1)(b)] to effect the removal — unless the operating agreement provided the non-member manager a veto right over changes in the quantum provision.

The subsection does not refer to member veto rights because, unless otherwise provided in the operating agreement, the consent of each member is necessary to effect an amendment. Section 407(b)(5) and (c)(4)(D) [§ 30-6-407(2)(e) and (3)(d)(iv)].

**Subsection (b) [(2)]** — The law of unincorporated business organizations is only beginning to grapple in a modern way with the tension between the rights of an organization's owners to carry on their activities as they see fit (or have agreed) and the rights of transferees of the organization's economic interests. (Such transferees can include the heirs of business founders as well as former owners who are "locked in" as transferees of their own interests. See Section 603(a)(3) [§ 30-6-603(1)(c)].)

If the law categorically favors the owners, there is a serious risk of expropriation and other abuse. On the other hand, if the law grants former owners and other transferees

the right to seek judicial protection, that specter can "freeze the deal" as of the moment an owner leaves the enterprise or a third party obtains an economic interest.

*Bauer v. Blomfield Co./Holden Joint Venture*, 849 P.2d 1365 (Alaska 1993) illustrates this point nicely. The case arose after all the partners had approved a commission arrangement with a third party and the arrangement dried up all the partnership profits. When an assignee of a partnership interest objected, the court majority flatly rejected not only the claim but also the assignee's right to assert the claim. A mere assignee "was not entitled to complain about a decision made with the consent of all the partners." *Id.* at 1367. A footnote explained, "We are unwilling to hold that partners owe a duty of good faith and fair dealing to assignees of a partner's interest." *Id.* at 1367, n. 2.

The dissent, invoking the law of contracts, asserted that the majority had turned the statutory protection of the partners' management prerogatives into an instrument for abuse of assignees:

It is a well-settled principle of contract law that an assignee steps into the shoes of an assignor as to the rights assigned. Today, the court summarily dismisses this principle in a footnote and leaves the assignee barefoot. . . . As interpreted by the court, the [partnership] statute now allows partners to deprive an assignee of profits to which he is entitled by law for whatever outrageous motive or reason. The court's opinion essentially leaves the assignee of a partnership interest without remedy to enforce his right.

*Id.* at 1367-8 (Matthews, J., dissenting).

The *Bauer* majority is consistent with the limited but long-standing case law in this area (all of it pertaining to partnerships rather than LLCs). This subsection follows the *Bauer* majority and other cases by expressly subjecting transferees and dissociated members to operating agreement amendments made after the transfer or dissociation. *Compare* UPA § 32(2) (permitting an assignee to seek judicial dissolution of an at-will general partnership at any time and of a



partnership for a term or undertaking if partnership continues in existence after the completion of the term or undertaking); RUPA § 801(6) (same except adding the requirement that the court determine that dissolution is equitable); ULLCA, § 801(5) (same as RUPA); ULLCA, § 801(4) (permitting a dissociated member to seek dissolution on the grounds *inter alia* of oppressive conduct). See also UCC §§ 9-405(a) and (b) and RESTATEMENT (SECOND) OF CONTRACTS § 338 (1981) (recognizing a duty of good faith applicable to the modification of a contract when an assignment of contract is in effect).

The issue of whether, in extreme and sufficiently harsh circumstances, transferees might be able to claim some type of duty or obligation to protect against expropriation, is a question for other law.

**Subsection (d) [(4)]** — A limited liability company is a creature of contract as well as a creature of statute. It will be possible, albeit improvident, for the operating agreement to be inconsistent with the certificate of organization or other public filings pertaining to the limited liability company. For those circumstances, this subsection provides rules for determining which source of information prevails.

For members, managers and transferees, the operating agreement is paramount. For third parties seeking to invoke the public

record, actual knowledge of that record is necessary and notice, deemed notice, and deemed knowledge under Section 103 [§ 30-6-103] are irrelevant. A third party wishing to enforce the public record over the operating agreement must show reasonable reliance on the public record, and reliance presupposes knowledge.

The mere fact that a term is present in a publicly-filed record and not in the operating agreement, or *vice versa*, does not automatically establish a conflict. This subsection does not expressly cover a situation in which (i) one of the specified filed records contains information in addition to, but not inconsistent with, the operating agreement, and (ii) a person, other than a member or transferee, reasonably relies on the additional information. However, the policy reflected in this subsection seems equally applicable to that situation.

Section 110(a)(4) [§ 30-6-110(1)(d)] might also be relevant to the subject matter of this subsection. Absent a contrary provision in the operating agreement, language in an LLC's certificate of organization might be evidence of the members' agreement and might thereby constitute or at least imply a term of the operating agreement.

This subsection does not apply to records delivered to the [Secretary of State] for filing on behalf of persons other than a limited liability company.

**30-6-113. Designated office and registered agent.** — (1) A limited liability company shall designate and continuously maintain in this state:

- (a) An office, which need not be a place of its activity in this state; and
- (b) A registered agent.

(2) A foreign limited liability company that has a certificate of authority under section 30-6-802, Idaho Code, shall designate and continuously maintain in this state a registered agent.

**History.**

I.C., § 30-6-113, as added by 2008, ch. 176, § 1, p. 487.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**OFFICIAL COMMENT**

**Source:** ULPA (2001), § 114.

**IDAHOO REPORTER'S COMMENT**

The Idaho Registered Agents Act regulates the appointment, duties, change and resignation of registered agents and service of process upon a registered agent. Provisions of RULLCA that address these issues have been modified or removed from the Idaho Act. (In particular, RULLCA sections 115 and 116 have been removed in their entirety.) Cross-references to the Idaho Registered Agents Act have been inserted where appropriate throughout the Idaho Act.

**30-6-114. Change of designated office.** — (1) A limited liability



company or foreign limited liability company may change its designated office by delivering to the secretary of state for filing a statement of change containing:

- (a) The name of the company;
- (b) The street and mailing addresses of its current designated office; and
- (c) If the current designated office is to be changed, the street and mailing addresses of the new designated office.

(2) Subject to section 30-6-205(3), Idaho Code, a statement of change is effective when filed by the secretary of state.

**History.**

I.C., § 30-6-114, as added by 2008, ch. 176, § 1, p. 487.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**OFFICIAL COMMENT**

**Source** — ULPa (2001) § 115, which is based on ULLCA § 109.

**Subsection (a) [(1)]** — This subsection uses “may” rather than “shall” because other avenues exist. A limited liability company may also change the information by amending its certificate of organization, Section 202 [§ 30-6-202], or through its annual report, Section 209(e) [§ 30-6-209(5)]. A foreign limited liability company may use its annual

report. Section 209(e) [§ 30-6-209(5)]. However, neither a limited liability company nor a foreign limited liability company may wait for the annual report if the information described in the public record becomes inaccurate. *See* Sections 207 [§ 30-6-207] (imposing liability for false information in record) and 116(b) [not adopted in Idaho] (providing for substitute service).

**IDAHO REPORTER'S COMMENT**

See Idaho Reporter's Comments to Idaho Code § 30-6-113.

**PART 2. FORMATION — CERTIFICATE OF ORGANIZATION AND OTHER FILINGS**

**30-6-201. Formation of limited liability company — Certificate of organization.** — (1) One (1) or more persons may act as organizers to form a limited liability company by signing and delivering to the secretary of state for filing a certificate of organization.

(2) A certificate of organization must state:

- (a) The name of the limited liability company, which must comply with section 30-6-108, Idaho Code;
- (b) The street and mailing addresses of the initial designated office and the information required by section 30-405(1), Idaho Code;
- (c) The name and mailing address of at least one (1) member or manager of the limited liability company; and
- (d) If the limited liability company is a professional company, a statement to that effect and the principal profession or professions for which members are duly licensed or otherwise legally authorized to render professional services.

(3) Subject to section 30-6-112(3), Idaho Code, a certificate of organization may also contain statements as to matters other than those required by subsection (2) of this section. However, a statement in a certificate of

organization is not effective as a statement of authority as defined in section 30-6-302, Idaho Code. The secretary of state shall not accept operating agreements for filing.

(4) The following rules apply to the filing of a certificate of organization:

(a) A limited liability company is formed when the secretary of state has filed the certificate of organization, unless the certificate states a delayed effective date pursuant to section 30-6-205(3), Idaho Code.

(b) If the certificate states a delayed effective date, a limited liability company is not formed if, before the certificate takes effect, a statement of cancellation is signed and delivered to the secretary of state for filing and the secretary of state files the certificate of cancellation.

(c) Subject to any delayed effective date and except in a proceeding by this state to dissolve a limited liability company, the filing of the certificate of organization by the secretary of state is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.

#### History.

I.C., § 30-6-201, as added by 2008, ch. 176, § 1, p. 487.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53,

Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**Collateral References.** Construction and application of limited liability company acts — Issues relating to formation of limited liability company and addition or disassociation of members thereto. 43 A.L.R.6th 611.

### OFFICIAL COMMENT

No topic received more attention or generated more debate in the drafting process for this Act than the question of the “shelf LLC” — i.e., an LLC formed without having at least one member upon formation. Reasonable minds differed (occasionally intensely) as to whether the “shelf” approach (i) is necessary to accommodate current business practices; and (ii) somehow does conceptual violence to the partnership antecedents of the limited liability company.

The 2006 Annual Meeting Draft provided for a “limited shelf” — a shelf that lacked capacity to conduct any substantive activities:

(a) Except as otherwise provided in subsection (b), a limited liability company has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities.

(b) Until a limited liability company has or has had at least one member, the company lacks the capacity to do any act or carry on any activity except:

(1) delivering to the [Secretary of State] for filing a statement of change under Sections 114, an amendment to the certificate under Section 202, a statement of correction under Section 206, an annual report under section 209, and a statement of termination under Section 702(b)(2)(F);

(2) admitting a member under section 401; and

(3) dissolving under Section 701.

(c) A limited liability company that has or has had at least one member may ratify an act or activity that occurred when the company lacked capacity under subsection (b).

However, when the Conference considered the 2006 Annual Meeting Draft, the Drafting Committee itself proposed an amendment, and the Conference agreed. A product of intense discussion and compromise with several ABA Advisors, the amendment substituted a double filing and “embryonic certificate” approach. An organizer may deliver for filing a certificate of organization without the company having any members and the filing officer will file the certificate, but:

- the certificate as delivered to the filing officer must acknowledge that situation, Subsection (b)(3) [not adopted in Idaho];
- the limited liability company is not formed until and unless the organizer timely delivers to the filing officer a notice that the company has at least one member, Subsection (e)(1) [not adopted in Idaho]; and
- if the organizer does not timely deliver the required notice, the certificate lapses and is void. *Id.*

The Conference recommends a 90-day “win-  
dow” for filing the notice, which must state  
“the date on which a person or persons be-  
came the company’s initial member or mem-  
bers.” When the filing officer files that notice,  
the company is deemed formed as of the date  
stated in the notice. Subsection (e)(2) [not  
adopted in Idaho].

Thus, under this Act, the delivery to the  
filing officer of a certificate of organization has  
different consequences, depending on  
whether the certificate contains the “no mem-  
bers” statement as provided by subsection  
(b)(3) [not adopted in Idaho].

does the certificate contain the “no members” statement under subsection (b)(3) [not adopted in Idaho]	by delivering the certificate for filing, what is the organizer affirming, per Section 207(c) [§ 30-6-207(3)], about members	effect of the filing officer filing the certificate	logical relationship of the filed certificate to the formation of the LLC
no	that the LLC will have at least one member upon formation	LLC is formed, subject to any delayed effective date	necessary and sufficient
yes	that the LLC will have no members when the filing officer files the certificate	the document is part of the public record, protects the name, and starts the 90-day clock ticking	necessary but not sufficient

**Subsection (b) [(2)]** — This Act does not  
require the certificate of organization to des-  
ignate whether the limited liability company  
is manager-managed or member-managed.  
Under this Act, those characterizations per-  
tain principally to *inter se* relations, and the  
Act therefore looks to the operating agree-  
ment to make the characterization. *See* Sec-  
tions 102(10) and (12) [§ 30-6-102(11) and  
(13); 407(a) [§ 30-6-407(1)]].

**Subsection (d) [(4)]** — This subsection  
states the “pathway” through which a limited  
liability company is formed if the certificate of  
organization does not contain a statement as  
provided in subsection (b)(3) [not adopted in  
Idaho] — i.e., if the limited liability company  
will have at least one member when the filing  
officer files the certificate.

**Subsection (e) [not adopted in Idaho]**  
— This subsection states the “pathway”  
through which a limited liability company is  
formed if the certificate of organization con-  
tains a statement as provided in subsection  
(b)(3) [not adopted in Idaho] — i.e., if the  
limited liability company will not have at

least one member when the filing officer files  
the certificate.

This pathway requires a second filing in  
order to form the limited liability company: “a  
notice stating (A) that the limited liability  
company has at least one member; and (B) the  
date on which a person or persons became the  
company’s initial member or members.” Sub-  
section (e)(1) [not adopted in Idaho].

In this pathway, a certificate of organiza-  
tion may not itself state a delayed effective  
date, Section 205(c) [§ 30-6-205(3)], because:

- the reason to state a delayed effective  
date in a certificate of organization is to  
set the date on which the limited liability  
company is formed, Section 205(c) [§ 30-  
6-205(3)]; and
- when a certificate contains a statement  
as provided in subsection (b)(3) [not ad-  
opted in Idaho], this Act mandates when  
(if at all) the limited liability company is  
deemed formed — i.e., “as of the date of  
initial membership stated in the notice  
delivered” to the filing officer as the sec-  
ond filing. Subsection (e)(2) [not adopted  
in Idaho].



## IDAHO REPORTER'S COMMENT

"Shelf" registrations of limited liability companies are not permitted under the Idaho Act. A limited liability company may have multiple members, but it is required to have at least one member when it is formed. A manager or the organizer may act in behalf of the member(s) in filing the certificate of organization. No manager is required; however, the person signing the certificate of organization shall be the organizer, whether that person is also the initial member or a manager acting in behalf of the initial member.

The Secretary of State is prohibited from accepting an operating agreement for filing as a certificate of organization.

**30-6-201A. Professional company.** — (1) Section 30-6-201, Idaho Code, shall not be deemed to authorize a professional company to render allied professional services where the laws pertaining to specific professions or the codes of ethics or professional responsibility of any of the professions involved in such a proposed professional company prohibit such a combination of professional services.

(2) No professional company may render professional services in this state except through its managers, members, employees and agents who are duly licensed or otherwise legally authorized to render such professional services within this state. The term "employee," as used in this section, does not include clerks, secretaries, bookkeepers, technicians and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required.

(3) Nothing contained in this section shall be interpreted to abolish, repeal, modify, restrict or limit the law now in effect in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional services or to the standards for professional conduct. Notwithstanding section 30-6-304(1), Idaho Code, any manager, member, agent or employee of a professional company organized under this chapter shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him, or by any person under his direct supervision and control, while rendering professional services on behalf of the professional company to the person for whom such professional services were being rendered. The professional company shall be liable up to the full value of its property for any negligent or wrongful acts or misconduct committed by any of its managers, members, agents or employees while they are engaged on behalf of the professional company in the rendering of professional services.

(4) The relationship of a person, whether as an individual, shareholder of a professional corporation, partner of a partnership or member of a professional company, to a professional company organized under the provisions of this chapter with which such person is associated, whether as manager, member or employee, shall in no way modify or diminish the jurisdiction over him of the governmental authority or state agency which licensed, certified or registered him for a particular profession.

(5) No professional company may offer membership to or accept as a member anyone other than an individual who is duly licensed or otherwise

legally authorized to render the same specific professional services as those for which the company was organized or professional corporations, partnerships or limited liability companies, all of whose shareholders, partners or members are duly licensed or otherwise legally authorized to render the same specific professional services as those for which the professional company was organized. No member of a professional company shall enter into a voting trust agreement or any other type of agreement vesting another person with the authority to exercise the voting power of his membership.

(6) If any manager, member, agent or employee of a professional company who has been rendering professional services within this state accepts employment that, pursuant to existing law, places restrictions or limitations upon his continued rendering of such professional services, he shall cease to be a member in such professional company in accordance with the provisions of section 30-6-602(15), Idaho Code, and the remaining members of the professional company shall take such action as is required to terminate such membership.

(7) No member of a professional company may sell or transfer his membership in such professional company except to another individual, professional corporation, partnership or limited liability company eligible to be a member of such professional company and except pursuant to the provisions of section 30-6-502, Idaho Code.

(8) The provisions of this section shall not be considered as repealing, modifying or restricting the applicable provisions of law regulating the several professions except insofar as such laws conflict with this section.

#### History.

I.C., § 30-6-201A, as added by 2008, ch. 176, § 1, p. 488.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

### IDAHO REPORTER'S COMMENT

Section 201A has been added to the Idaho Act to authorize the organization of professional limited liability companies. These provisions are consistent with Section 53-615 of the predecessor Idaho Limited Liability Company Act (Idaho Code Sections 53-601 *et seq.*) and also with the Idaho Professional Service Corporation Act (Idaho Code Sections 30-1301 *et seq.*). In addition to Section 201A, the following sections of the Idaho Act address professional limited liability companies: 30-6-102(1), (19) and (20) (definitions of "allied professional services", "membership" or "membership interest", "professional company" and "professional service"); 30-6-105 (powers); 30-6-108 (name); 30-6-201(2)(d) (certificate of organization); 30-6-502(1)(a) (transfer of transferable interest); 30-6-602(15) (events causing dissociation as a member); 30-6-801(1)(b) (foreign PLLC).

**30-6-202. Amendment or restatement of certificate of organization.** — (1) A certificate of organization may be amended or restated at any time.

(2) To amend its certificate of organization, a limited liability company must deliver to the secretary of state for filing an amendment stating:

- (a) The name of the company;
- (b) The date of filing of its certificate of organization; and

(c) The changes the amendment makes to the certificate as most recently amended or restated.

(3) To restate its certificate of organization, a limited liability company must deliver to the secretary of state for filing a restatement, designated as such in its heading, stating:

(a) In the heading or in an introductory paragraph, the company's present name and the date of the filing of the company's initial certificate of organization;

(b) If the company's name has been changed at any time since the company's formation, each of the company's former names; and

(c) The changes the restatement makes to the certificate as most recently amended or restated.

(4) Subject to sections 30-6-112(3) and 30-6-205(3), Idaho Code, an amendment to or restatement of a certificate of organization is effective when filed by the secretary of state.

(5) If a member of a member-managed limited liability company, or a manager of a manager-managed limited liability company, knows that any information in a filed certificate of organization was inaccurate when the certificate was filed or has become inaccurate owing to changed circumstances, the member or manager shall promptly:

(a) Cause the certificate to be amended; or

(b) If appropriate, deliver to the secretary of state for filing a statement of change under section 30-6-114, Idaho Code, or section 30-408, Idaho Code, or a statement of correction under section 30-6-206, Idaho Code.

#### **History.**

I.C., § 30-6-202, as added by 2008, ch. 176, § 1, p. 489.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

### **OFFICIAL COMMENT**

**Subsection (e) [(5)]** — This subsection is taken from ULPA (2001) § 202(c), which imposes the responsibility on general partners. The original ULLCA had no comparable provision.

This subsection imposes an obligation directly on the members and managers rather than on the limited liability company. A member or manager's failure to meet the obligation exposes the member or manager to liability to third parties under Section 207(a)(2) [§ 30-6-207(1)(b)] and might constitute a breach of the member or manager's duties

under Section 409(c) and (g)(1) [§ 30-6-409(3) and (7)(a)]. In addition, an aggrieved person may seek a remedy under Section 204 [§ 30-6-204] (Signing and Filing Pursuant to Judicial Order).

Like other provisions of the Act requiring records to be delivered to the filing officer for filing, this section is not subject to change by the operating agreement. *See* Section 110(c)(11) [§ 30-6-110(3)(k)] (precluding the operating agreement from "restrict[ing] the rights under this chapter of a person other than a member or manager").

**30-6-203. Signing of records to be delivered for filing to secretary of state.** — (1) A record delivered to the secretary of state for filing pursuant to this chapter must be signed as follows:

(a) Except as otherwise provided in paragraphs (b) through (d) of this subsection, a record signed on behalf of a limited liability company must be signed by a person authorized by the company.



(b) A limited liability company's initial certificate of organization must be signed by at least one (1) person acting as an organizer.

(c) A record filed on behalf of a dissolved limited liability company that has no members must be signed by the person winding up the company's activities under section 30-6-702(3), Idaho Code, or a person appointed under section 30-6-702(4), Idaho Code, to wind up those activities.

(d) A statement of cancellation under section 30-6-201(4)(b), Idaho Code, must be signed by each organizer that signed the initial certificate of organization, but a personal representative of a deceased or incompetent organizer may sign in the place of the decedent or incompetent.

(e) A statement of denial by a person under section 30-6-303, Idaho Code, must be signed by that person.

(f) Any other record must be signed by the person on whose behalf the record is delivered to the secretary of state.

(2) Any record filed under this chapter may be signed by an agent.

(3) Any record filed under this chapter must be signed in a manner acceptable to the secretary of state.

#### **History.**

I.C., § 30-6-203, as added by 2008, ch. 176, § 1, p. 490.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

### **OFFICIAL COMMENT**

**Subsection (b) [(2)]** — This subsection does not require that the agent's authority be memorialized in a writing or other record. However, a person signing as an agent "af-

firms under penalty of perjury that [the assertion of agent status is] ... accurate." Section 207(c) [§ 30-6-207(3)].

**30-6-204. Signing and filing pursuant to judicial order.** — (1) If a person required by this chapter to sign a record or deliver a record to the secretary of state for filing under this chapter does not do so, any other person that is aggrieved may petition the district court to order:

(a) The person to sign the record;

(b) The person to deliver the record to the secretary of state for filing; or

(c) The secretary of state to file the record unsigned.

(2) If a petitioner under subsection (1) of this section is not the limited liability company or foreign limited liability company to which the record pertains, the petitioner shall make the company a party to the action.

#### **History.**

I.C., § 30-6-204, as added by 2008, ch. 176, § 1, p. 491.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

### **OFFICIAL COMMENT**

**Source** — ULPA (2001) § 205, which is based on RULPA § 205, which was the source of ULLCA § 210.

**Subsection (a)(3) [(1)(c)]** — A record filed under this paragraph is effective without being signed.

**30-6-205. Delivery to and filing of records by secretary of state — Effective time and date.** — (1) A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the record's purpose, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. If the filing fees have been paid, unless the secretary of state determines that a record does not comply with the filing requirements of this chapter, the secretary of state shall file the record and:

(a) For a statement of denial under section 30-6-303, Idaho Code, send a copy of the filed statement and a receipt for the fees to the person on whose behalf the statement was delivered for filing and to the limited liability company; and

(b) For all other records, send a copy of the filed record and a receipt for the fees to the person on whose behalf the record was filed.

(2) Upon request and payment of the requisite fee, the secretary of state shall send to the requester a certified copy of a requested record.

(3) Except as otherwise provided in section 30-6-206, Idaho Code, a record delivered to the secretary of state for filing under this chapter may specify an effective time and a delayed effective date. Subject to sections 30-408, 30-6-201(4)(a) and 30-6-206, Idaho Code, a record filed by the secretary of state is effective:

(a) If the record does not specify either an effective time or a delayed effective date, on the date and at the time the record is filed as evidenced by the secretary of state's endorsement of the date and time on the record;

(b) If the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;

(c) If the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of:

(i) The specified date; or

(ii) The ninetieth day after the record is filed; or

(d) If the record specifies an effective time and a delayed effective date, at the specified time on the earlier of:

(i) The specified date; or

(ii) The ninetieth day after the record is filed.

#### **History.**

I.C., § 30-6-205, as added by 2008, ch. 176, § 1, p. 491.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

### **OFFICIAL COMMENT**

**Source** — ULPA (2001) § 206, which was based on ULLCA § 206.

This Act uses the concept of "filing" to refer to the official act of the Secretary of State, which is typically preceded by a person "delivering" some record "to the Secretary of State for filing."

**Subsection (c)(3)(B) and 4(B) [3(c)(ii)**

**and (d)(ii)]** — If a person delivers to the Secretary of State for filing a record that contains an over-long delay in the effective date, the Secretary of State: (i) will not reject the record; and (ii) is neither required nor authorized to inform the person that this Act will truncate the period of delay specified in the record.

**30-6-206. Correcting filed record.** — (1) A limited liability company or foreign limited liability company may deliver to the secretary of state for filing a statement of correction to correct a record previously delivered by the company to the secretary of state and filed by the secretary of state, if at the time of filing the record contained inaccurate information or was defectively signed.

(2) A statement of correction under subsection (1) of this section may not state a delayed effective date and must:

- (a) Describe the record to be corrected, including its filing date, or attach a copy of the record as filed;
- (b) Specify the inaccurate information and the reason it is inaccurate or the manner in which the signing was defective; and
- (c) Correct the defective signature or inaccurate information.

(3) When filed by the secretary of state, a statement of correction under subsection (1) of this section is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed:

- (a) For the purposes of section 30-6-103(4), Idaho Code; and
- (b) As to persons that previously relied on the uncorrected record and would be adversely affected by the retroactive effect.

**History.**

I.C., § 30-6-206, as added by 2008, ch. 176, § 1, p. 492.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**OFFICIAL COMMENT**

**Source** — ULPA (2001) § 207, which was based on ULLCA § 207.

**30-6-207. Liability for inaccurate information in filed record.** — (1) If a record delivered to the secretary of state for filing under this chapter and filed by the secretary of state contains inaccurate information, a person that suffers a loss by reliance on the information may recover damages for the loss from:

- (a) A person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be inaccurate at the time the record was signed; and
- (b) Subject to subsection (2) of this section, a member of a member-managed limited liability company or the manager of a manager-managed limited liability company, if:
  - (i) The record was delivered for filing on behalf of the company; and
  - (ii) The member or manager had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the member or manager reasonably could have:
    - 1. Effected an amendment under section 30-6-202, Idaho Code;
    - 2. Filed a petition under section 30-6-204, Idaho Code; or
    - 3. Delivered to the secretary of state for filing a statement of change



under section 30-6-114, Idaho Code, or section 30-408, Idaho Code, or a statement of correction under section 30-6-206, Idaho Code.

(2) To the extent that the operating agreement of a member-managed limited liability company expressly relieves a member of responsibility for maintaining the accuracy of information contained in records delivered on behalf of the company to the secretary of state for filing under this chapter and imposes that responsibility on one (1) or more other members, the liability stated in subsection (1)(b) of this section applies to those other members and not to the member that the operating agreement relieves of the responsibility.

(3) An individual who signs a record authorized or required to be filed under this chapter affirms under penalty of perjury that the information stated in the record is accurate.

**History.**

I.C., § 30-6-207, as added by 2008, ch. 176, § 1, p. 492.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**OFFICIAL COMMENT**

**Source:** ULPA (2001) § 208, which expanded on ULLCA § 209.

**Section (a)(2)(B) [(1)(b)(ii)]** — This subparagraph implies that doing any of the acts listed in clauses (i) through (iii) [1. through 3.] will preclude liability arising from subsequent reliance. In this connection, Clause (a)(2)(B)(ii) [(1)(b)(ii)(2.)] warrants special at-

tention, because that act (filing a petition in court) can occur without any immediate effect on the records relevant to a limited liability company maintained by the filing officer. The other clauses refer to acts that (assuming no filing backlog) affect that public record immediately.

**30-6-208. Certificate of existence or authorization.** — (1) The secretary of state, upon request and payment of the requisite fee, shall furnish to any person a certificate of existence for a limited liability company if the records filed in the office of the secretary of state show that the company has been formed under section 30-6-201, Idaho Code, and the secretary of state has not filed a statement of termination pertaining to the company. A certificate of existence must state:

- (a) The company's name;
- (b) That the company was duly formed under the laws of this state and the date of formation;
- (c) Whether all fees due under this chapter or other law to the secretary of state have been paid;
- (d) Whether the company's most recent annual report required by section 30-6-209, Idaho Code, has been filed by the secretary of state;
- (e) Whether the secretary of state has administratively dissolved the company;
- (f) Whether the company has delivered to the secretary of state for filing a statement of dissolution;
- (g) That a statement of termination has not been filed by the secretary of state; and

(h) Other facts of record in the office of the secretary of state which are specified by the person requesting the certificate.

(2) The secretary of state, upon request and payment of the requisite fee, shall furnish to any person a certificate of authorization for a foreign limited liability company if the records filed in the office of the secretary of state show that the secretary of state has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation. A certificate of authorization must state:

(a) The company's name and any alternate name adopted under section 30-6-805(1), Idaho Code, for use in this state;

(b) That the company is authorized to transact business in this state;

(c) Whether all fees due under this chapter or other law to the secretary of state have been paid;

(d) Whether the company's most recent annual report required by section 30-6-209, Idaho Code, has been filed by the secretary of state;

(e) That the secretary of state has not revoked the company's certificate of authority and has not filed a notice of cancellation; and

(f) Other facts of record in the office of the secretary of state which are specified by the person requesting the certificate.

(3) Subject to any qualification stated in the certificate, a certificate of existence or certificate of authorization issued by the secretary of state is conclusive evidence that the limited liability company is in existence or the foreign limited liability company is authorized to transact business in this state.

**History.**

I.C., § 30-6-208, as added by 2008, ch. 176, § 1, p. 493.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**OFFICIAL COMMENT**

**Source** — ULP (2001), § 209, which was based on ULLCA, § 208.

The information provided in a certificate of

existence or authorization is, of course, current only as of the date of the certificate.

**30-6-209. Annual report for secretary of state.** — (1) Each year, a limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state for filing a report that states:

(a) The name of the company;

(b) The information required by section 30-405(1), Idaho Code;

(c) The street and mailing addresses of the company's designated office;

(d) The street and mailing addresses of its principal office;

(e) The name and mailing address of at least one (1) member or manager; and

(f) In the case of a foreign limited liability company, the state or other jurisdiction under whose law the company is formed and any alternate name adopted under section 30-6-805(1), Idaho Code.

(2) Information in an annual report under this section must be current as of the date the report is delivered to the secretary of state for filing.

(3) The annual report of a limited liability company or foreign limited liability company shall be delivered to the secretary of state each year before the end of the month during which a limited liability company was initially organized, or a foreign limited liability company was initially authorized to transact business. Beginning one (1) year after a limited liability company is organized or a foreign limited liability company is authorized to transact business, and each year thereafter, the annual report of the limited liability company must be received in the office of the secretary of state not later than the close of business on the final day of the applicable month. If the secretary of state finds that such report conforms to the requirements of this chapter, he shall file the same.

(4) If an annual report under this section does not contain the information required in subsection (1) of this section, the secretary of state shall promptly notify the reporting limited liability company or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in subsection (1) of this section and delivered to the secretary of state within thirty (30) days after the effective date of the notice, it is timely delivered.

(5) If an annual report under this section contains an address of a designated office or the name or address of a registered agent which differs from the information shown in the records of the secretary of state immediately before the annual report becomes effective, the differing information in the annual report is considered a statement of change under section 30-6-114, Idaho Code, or section 30-408, Idaho Code.

**History.**  
I.C., § 30-6-209, as added by 2008, ch. 176, § 1, p. 494.  
**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

OFFICIAL COMMENT

**Source** — ULPa (2001) § 210, which was based on ULLCA § 211.  
A limited liability company that fails to comply with this section is subject to administrative dissolution. Section 705(a)(2) [§ 30-

6-705(1)(a)]. A foreign limited liability company that fails to comply with this section is subject to having its certificate of authority revoked. Section 806(a)(2) [§ 30-6-806(1)(a)].

**30-6-210. Filing, service and copying fees.** — (1) The secretary of state shall collect the following fees for copying and certifying the copy of any document filed under this chapter:

- (a) Twenty-five cents (25¢) per page for copying; and
- (b) Ten dollars (\$10.00) for a certificate.

(2) The secretary of state shall charge and collect the following fees when the documents described are delivered for filing:

(a) Certificate of organization .....	\$100.00
(b) Correction statement .....	\$ 30.00
(c) Statement of cancellation .....	\$ 30.00



(d) Statement of authority .....	\$ 30.00
(e) Statement of denial .....	\$ 30.00
(f) Amendment of certificate of organization .....	\$ 30.00
(g) Restatement of certificate of organization .....	\$ 30.00
(h) Statement of dissolution .....	no fee

**History.**  
I.C., § 30-6-210, as added by 2008, ch. 176, § 1, p. 494.  
**Compiler’s Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

PART 3. RELATIONS OF MEMBERS AND MANAGERS TO PERSONS DEALING WITH  
LIMITED LIABILITY COMPANY

**30-6-301. No agency power of member as member.** — (1) A member is not an agent of a limited liability company solely by reason of being a member.

(2) A person’s status as a member does not prevent or restrict law other than this chapter from imposing liability on a limited liability company because of the person’s conduct.

**History.**  
I.C., § 30-6-301, as added by 2008, ch. 176, § 1, p. 495.  
**Compiler’s Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53,

Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**Collateral References.** Construction and application of limited liability company acts — Issues relating to liability of limited liability company for acts of its members, managers, officers, and agents. 46 A.L.R.6th 1.

OFFICIAL COMMENT

**Subsection (a) [(1)]** — Most LLC statutes, including the original ULLCA, provide for what might be termed “statutory apparent authority” for members in a member-managed limited liability company and managers in a manager-managed limited liability company. This approach codifies the common law notion of apparent authority by position and dates back at least to the original, 1914 Uniform Partnership Act. UPA, § 9 provided that “the act of every partner ... for apparently carrying on in the usual way the business of the partnership ... binds the partnership,” and that formulation has been essentially followed by RUPA, § 301, ULLCA, § 301, ULPA (2001), § 402, and myriad state LLC statutes.

This Act rejects the statutory apparent authority approach, for reasons summarized in a “Progress Report on the Revised Uniform Limited Liability Company Act,” published in the March 2006 issue of the newsletter of the ABA Committee on Partnerships and Unincorporated Business Organizations:

The concept [of statutory apparent author-

ity] still makes sense both for general and limited partnerships. A third party dealing with either type of partnership can know by the formal name of the entity and by a person’s status as general or limited partner whether the person has the power to bind the entity.

Most LLC statutes have attempted to use the same approach but with a fundamentally important (and problematic) distinction. An LLC’s status as member-managed or manager-managed determines whether members or managers have the statutory power to bind. But an LLC’s status as member- or manager-managed is not apparent from the LLC’s name. A third party must check the public record, which may reveal that the LLC is manager-managed, which in turn means a member as member has no power to bind the LLC. As a result, a provision that originated in 1914 as a protection for third parties can, in the LLC context, easily function as a trap for the unwary. The problem is exacerbated by the almost infinite variety of management

structures permissible in and used by LLCs.

The new Act cuts through this problem by simply eliminating statutory apparent authority.

PUBOGRAM, Vol. XXIII, no. 2 at 9-10.

Codifying power to bind according to position makes sense only for organizations that have well-defined, well-known, and almost paradigmatic management structures. Because:

- flexibility of management structure is a hallmark of the limited liability company; and
- an LLC's name gives no signal as to the organization's structure,

it makes no sense to:

- require each LLC to publicly select between two statutorily preordained structures (i.e., manager-managed/member-managed); and then
- link a "statutory power to bind" to each of those two structures.

Under this Act, other law — most especially the law of agency — will handle power-to-bind questions. See the Comment to subsection (b) [(2)].

This subsection does not address the power to bind of a manager in a manager-managed LLC, although this Act does consider a manager's management responsibilities. See Section 407(c) [§ 30-6-407(3)] (allocating management authority, subject to the operating agreement). For a discussion of how agency law will approach the actual and apparent authority of managers, see Section 407(c) [§ 30-6-407(3)], cmt.

**Subsection (b) [(2)]** — As the "flip side" to subsection (a) [(1)], this subsection expressly preserves the power of other law to hold an LLC directly or vicariously liable on account of conduct by a person who happens to be a member. For example, given the proper set of circumstances: (i) a member might have actual or apparent authority to bind an LLC to a contract; (ii) the doctrine of *respondeat superior* might make an LLC liable for the tortious conduct of a member (i.e., in some circumstances a member acts as a "servant" of the LLC); and (iii) an LLC might be liable for negligently supervising a member who is acting on behalf of the LLC. A person's status as a member does not weigh against these or any other relevant theories of law.

Moreover, subsection (a) [(1)] does not prevent member status from being relevant to one or more elements of an "other law" theory. The most categorical example concerns the authority of a non-manager member of a manager-managed LLC.

**EXAMPLE:** A vendor knows that an LLC is manager-managed but chooses to accept the signature of a person whom the vendor knows is merely a member of the LLC.

Assuring the vendor that the LLC will stand by the member's commitment, the member states, "It's such a simple matter; no one will mind." The member genuinely believes the statement, and the vendor accepts the assurance.

The person's status as a mere member will undermine a claim of apparent authority. RESTATEMENT (THIRD) OF AGENCY § 2.03, cmt. d (2006) (explaining the "reasonable belief" element of a claim of apparent authority, and role played by context, custom, and the supposed agent's position in an organization). Likewise, the member will have no actual authority. Absent additional facts, section 407(c)(1) [§ 30-6-407(3)(a)] (vesting all management authority in the managers) renders the member's belief unreasonable. RESTATEMENT (THIRD) OF AGENCY § 2.01, cmt. c (2006) (explaining the "reasonable belief" element of a claim of actual authority).

In general, a member's actual authority to act for an LLC will depend fundamentally on the operating agreement.

**EXAMPLE:** Rachael and Sam, who have known each other for years, decide to go into business arranging musical tours. They fill out and electronically sign a one page form available on the website of the Secretary of State and become the organizers of MMT, LLC. They are the only members of the LLC, and their understanding of who will do what in managing the enterprise is based on several lengthy, late-night conversations that preceded the LLC's formation. Sam is to "get the acts," and Rachael is to manage the tour logistics. There is no written operating agreement.

In the terminology of this Act, MMT, LLC is member-managed, Section 407(a) [§ 30-6-407(1)], and the understanding reached in the late night conversations has become part of the LLC's operating agreement. Section 111(c) [§ 30-6-111(3)]. In agency law terms, the operating agreement constitutes a manifestation by the LLC to Rachael and Sam concerning the scope of their respective authority to act on behalf of the LLC. RESTATEMENT (THIRD) OF AGENCY § 2.01, cmt. c (2006) (explaining that a person's actual authority depends first on some manifestation attributable to the principal and stating: "Actual authority is a consequence of a principal's expressive conduct toward an agent, through which the principal manifests assent to be affected by the agent's action, and the agent's reasonable understanding of the principal's manifestation.")

Circumstances outside the operating agreement can also be relevant to determining the scope of a member's actual authority.

**EXAMPLE:** Homeworks, LLC is a manager-managed LLC with three members. The LLC's written operating agreement:



- specifies in considerable detail the management responsibilities of Margaret, the LLC's manager-member, and also states that Margaret is responsible for "the day-to-day operations" of the company;
- puts Garrett, a non-manager member, in charge of the LLC's transportation department; and
- specifies no management role for Brooksley, the third member.

When the LLC's chief financial officer quits suddenly, Margaret asks Brooksley, a CPA, to "step in until we can hire a replacement."

Under the operating agreement, Margaret's request to Brooksley is within Margaret's actual authority and is a manifestation attributable to the LLC. If Brooksley manifests assent to Margaret's request, Brooksley will have the actual authority to act as the LLC's CFO.

In the unlikely event that two or more people form a member-managed LLC without any understanding of how to allocate management responsibility between or among them, agency law, operating in the context the Act's "gap fillers" on management responsibility, will produce the following result:

A single member of a multi-member, member-managed LLC:

- has no actual authority to commit the LLC to any matter "outside the ordinary course of the activities of the company," section 407(b)(3) [§ 30-6-407(3)(d)]; and
- has the actual authority to commit the LLC to any matter "in the ordinary course of the activities of the company," section 407(b)(2) [§ 30-6-407(2)(c)], unless the member has reason to know that other members might disagree or the member has some other reason to know that consultation with fellow members is appropriate.

For an explanation of this result, see Section 407(c) [§ 30-6-407(3)], cmt., which provides a detailed agency law analysis in the context of a multi-manager, manager-managed LLC whose operating agreement is silent on the analogous question.

The common law of agency will also determine the apparent authority of a member of a member-managed LLC, and in that analysis what the particular third party knows or has reason to know about the management structure and business practices of the particular LLC will always be relevant. RESTATEMENT (THIRD) OF AGENCY § 3.03, cmt. b (2006) ("A principal may also make a manifestation by placing an agent in a defined position in an organization .... Third parties who interact with the principal through the agent will naturally and reasonably assume that the agent has authority to do acts consistent with the agent's position .... unless they have notice of facts suggesting that this may not be so.")

Under section 301(a) [(1) of this section], however, the mere fact that a person is a member of a member-managed limited liability company cannot *by itself* establish apparent authority by position. A course of dealing, however, may easily change the analysis:

EXAMPLE: David is a one of two members of DS, LLC, a member-managed LLC. David orders paper clips on behalf of the LLC, signing the purchase agreement, "David, as a member of DS, LLC." The vendor accepts the order, sends an invoice to the LLC's address, and in due course receives a check drawn on the LLC's bank account. When David next places an order with the vendor, the LLC's payment of the first order is a manifestation that the vendor may use in establishing David's apparent authority to place the second order.

**30-6-302. Statement of authority.** — (1) A limited liability company may deliver to the secretary of state for filing a statement of authority. The statement:

- (a) Must include the name of the company and the street and mailing addresses of its designated office;
- (b) With respect to any position that exists in or with respect to the company, may state the authority, or limitations on the authority, of all persons holding the position to:
  - (i) Execute an instrument transferring real property held in the name of the company; or
  - (ii) Enter into other transactions on behalf of, or otherwise act for or bind, the company; and
- (c) May state the authority, or limitations on the authority, of a specific person to:



- (i) Execute an instrument transferring real property held in the name of the company; or
- (ii) Enter into other transactions on behalf of, or otherwise act for or bind, the company.

(2) To amend or cancel a statement of authority filed by the secretary of state under section 30-6-205(1), Idaho Code, a limited liability company must deliver to the secretary of state for filing an amendment or cancellation stating:

- (a) The name of the company;
- (b) The street and mailing addresses of the company's designated office;
- (c) The caption of the statement being amended or canceled and the date the statement being affected became effective; and
- (d) The contents of the amendment or a declaration that the statement being affected is canceled.

(3) A statement of authority affects only the power of a person to bind a limited liability company to persons that are not members.

(4) Subject to subsection (3) of this section and section 30-6-103(4), Idaho Code, and except as otherwise provided in subsections (6), (7) and (8) of this section, a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself evidence of knowledge or notice of the limitation by any person.

(5) Subject to subsection (3) of this section, a grant of authority not pertaining to transfers of real property and contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that when the person gives value:

- (a) The person has knowledge to the contrary;
- (b) The statement has been canceled or restrictively amended under subsection (2) of this section; or
- (c) A limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective.

(6) Subject to subsection (3) of this section, an effective statement of authority that grants authority to transfer real property held in the name of the limited liability company and that is delivered by the limited liability company to the secretary of state for filing is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:

- (a) The statement has been canceled or restrictively amended under subsection (2) of this section; or
- (b) A limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective.

(7) Subject to subsection (3) of this section, if a statement containing a limitation on the authority to transfer real property held in the name of a limited liability company is filed with the secretary of state, all persons are deemed to know of the limitation.

(8) Subject to subsection (9) of this section, an effective statement of dissolution or termination is a cancellation of any filed statement of

authority for the purposes of subsection (6) of this section and is a limitation on authority for the purposes of subsection (7) of this section.

(9) After a statement of dissolution becomes effective, a limited liability company may deliver to the secretary of state for filing a statement of authority that is designated as a postdissolution statement of authority. The statement operates as provided in subsections (6) and (7) of this section.

(10) Unless earlier canceled, an effective statement of authority is canceled by operation of law five (5) years after the date on which the statement, or its most recent amendment, becomes effective.

(11) An effective statement of denial operates as a restrictive amendment under this section.

#### **History.**

I.C., § 30-6-302, as added by 2008, ch. 176, § 1, p. 495.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

### **OFFICIAL COMMENT**

This section is derived from and builds on RUPA, § 303, and, like that provision is conceptually divided into two realms: statements pertaining to the power to transfer interests in the LLC's real property and statements pertaining to other matters. In the latter realm, statements are filed only in the records of the Secretary of State, operate only to the extent the statements are actually known. Section 302(d) and (e) [(d) and (e) of this section].

As to interests in real property, in contrast, this section: (i) requires double-filing — with the Secretary of State and in the appropriate land records; and (ii) provides for constructive knowledge of statements limiting authority. Thus, a properly filed and recorded statement can protect the limited liability company, Section 302(g) [(7)], and, in order for a statement pertaining to real property to be a sword in the hands of a third party, the statement must have been both filed and properly recorded. Section 302(f) [not adopted in Idaho].

**Subsection (a)(2) [(1)(b)]** — This paragraph permits a statement to designate authority by position (or office) rather than by specific person. This type of a statement will enable LLCs to provide evidence of ongoing authority to enter into transactions without having to disclose to third parties the entirety of the operating agreement.

Here and elsewhere in the section, the phrase “real property” includes interests in real property, such as mortgages, easements, etc.

**Subsection (b) [(2)]** — For the requirement that the original statement, like any other record, be appropriately captioned, see Section 205(a) [§ 30-6-205(1)].

**Subsection (c) [(3)]** — This subsection contains a very important limitation — i.e., that this section's rules do not operate viz a viz members. The text of RUPA, § 303 makes this very important point only obliquely, but the Comment to that section is unequivocal:

It should be emphasized that Section 303 concerns the authority of partners to bind the partnership to third persons. As among the partners, the authority of a partner to take any action is governed by the partnership agreement, or by the provisions of RUPA governing the relations among partners, and is not affected by the filing or recording of a statement of partnership authority.

RUPA § 303, comment 4.

However, like any other record delivered for filing on behalf of an LLC, a statement of authority might be some evidence of the contents of the operating agreement. *See* Comment to Section 112(d) [§ 30-6-112(4)].

**Subsection (d) [(4)]** — The phrase “by itself” is important, because the existence of a limitation could be evidence if, for example, the person in question reviewed the public record at a time when the limitation was of record.

**Subsection (e)(1) [(5)(a)]** — What happens if a statement of authority conflicts with the contents of an LLC's certificate of organization? The contents of the certificate are not statements of authority, Section 201(c) [§ 30-6-201(3)], so the information in the certificate does not directly figure into the operation of this section. However, if the person claiming to rely on a statement of authority had read the certificate's conflicting information before giving value, that fact might be evidence that

person gave value with “knowledge to the contrary” of the statement.

### IDAHO REPORTER'S COMMENT

**Subsections (6) and (7)** — The Idaho Act designates the office of the secretary of state as the only place to file a statement of authority. In particular, a statement of authority that grants or limits authority to transfer real property is centrally filed with the secretary of state rather than being recorded in the real property records of the county where the property is located. Subsection (7) provides that an effective statement of authority filed with the secretary of state that limits authority to transfer real property held in the name of the limited liability company is constructive knowledge to all persons of the limitation.

**30-6-303. Statement of denial.** — A person named in a filed statement of authority granting that person authority may deliver to the secretary of state for filing a statement of denial that:

- (1) Provides the name of the limited liability company and the caption of the statement of authority to which the statement of denial pertains; and
- (2) Denies the grant of authority.

**History.**

I.C., § 30-6-303, as added by 2008, ch. 176, § 1, p. 496.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

### OFFICIAL COMMENT

For the effect of a statement of denial, see Section 302(k) [§ 30-6-302(11)].

**30-6-304. Liability of members and managers.** — (1) The debts, obligations or other liabilities of a limited liability company, whether arising in contract, tort or otherwise:

- (a) Are solely the debts, obligations or other liabilities of the company; and
- (b) Do not become the debts, obligations or other liabilities of a member or manager solely by reason of the member acting as a member or manager acting as a manager.

(2) The failure of a limited liability company to observe any particular formalities relating to the exercise of its powers or management of its activities is not a ground for imposing liability on the members or managers for the debts, obligations or other liabilities of the company.

**History.**

I.C., § 30-6-304, as added by 2008, ch. 176, § 1, p. 497.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53,

Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**Collateral References.** Construction and application of limited liability company acts — Issues relating to personal liability of individual members and managers of limited liability company as to third parties. 47 A.L.R.6th 1.



## OFFICIAL COMMENT

**Subsection (a)(2) [(1)(b)]** — This paragraph shields members and managers only against the debts, obligations and liabilities of the limited liability company and is irrelevant to claims seeking to hold a member or manager directly liable on account of the member's or manager's own conduct.

**EXAMPLE:** A manager personally guarantees a debt of a limited liability company. Subsection (a)(2) [(1)(b)] is irrelevant to the manager's liability as guarantor.

**EXAMPLE:** A member purports to bind a limited liability company while lacking any agency law power to do so. The limited liability company is not bound, but the member is liable for having breached the "warranty of authority" (an agency law doctrine). Subsection (a)(2) [(1)(b)] does not apply. The liability is not *for* a "debt[], obligation[], [or] liability[] of a limited liability company," but rather is the member's direct liability resulting because the limited liability company is *not* indebted, obligated or liable. RESTATEMENT (THIRD) OF AGENCY § 6.10 (2006).

**EXAMPLE:** A manager of a limited liability company defames a third party in circumstances that render the limited liability company vicariously liable under agency law. Under subsection (a)(2) [(1)(b)], the third party cannot hold the manager accountable for the company's liability, but that protection is immaterial. The manager is the tortfeasor and in that role is directly liable to the third party.

Subsection (a)(2) [(1)(b)] pertains only to claims by third parties and is irrelevant to claims by a limited liability company against a member or manager and *vice versa*. See e.g. Sections 408 [§ 30-6-408] (pertaining to a limited liability company's obligation to indemnify a member or manager), 409 [§ 30-6-409] (pertaining to management duties) and 901 [§ 30-6-901] (pertaining to a member's rights to bring a direct claim against a limited liability company).

**Subsection (b) [(2)]** — This subsection pertains to the equitable doctrine of "piercing

the veil" — i.e., conflating an entity and its owners to hold one liable for the obligations of the other. The doctrine of "piercing the corporate veil" is well-established, and courts regularly (and sometimes almost reflexively) apply that doctrine to limited liability companies. In the corporate realm, "disregard of corporate formalities" is a key factor in the piercing analysis. In the realm of LLCs, that factor is inappropriate, because informality of organization and operation is both common and desired.

This subsection does not preclude consideration of another key piercing factor — disregard by an entity's owners of the entity's economic separateness from the owners.

**EXAMPLE:** The operating agreement of a three-member, member-managed limited liability company requires formal monthly meetings of the members. Each of the members works in the LLC's business, and they consult each other regularly. They have forgotten or ignore the requirement of monthly meetings. Under subsection (b) [(2)], that fact is irrelevant to a piercing claim.

**EXAMPLE:** The sole owner of a limited liability company uses a car titled in the company's name for personal purposes and writes checks on the company's account to pay for personal expenses. These facts are relevant to a piercing claim; they pertain to economic separateness, not subsection (b) [(2)] formalities.

This subsection has no relevance to a member's claim of oppression under Section 701(a)(5)(B) [§ 30-6-701(1)(e)(ii)]. In some circumstances, disregard of agreed-upon formalities can be a "freeze out" mechanism. Likewise, this section has no relevance to a member's claim that the disregard of agreed-upon formalities is a breach of the operating agreement.

Provisions of regulatory law may impose liability by status on a member or manager. See CARTER G. BISHOP AND DANIEL S. KLEINBERGER, LIMITED LIABILITY COMPANIES: TAX AND BUSINESS LAW, ¶ 6.04(4) (Statutory Liability).

#### PART 4. RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY COMPANY

**30-6-401. Becoming a member.** — (1) If a limited liability company is to have only one (1) member upon formation, the person becomes a member as agreed by that person and the organizer of the company. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.

(2) If a limited liability company is to have more than one (1) member

upon formation, those persons become members as agreed by the persons before the formation of the company. The organizer acts on behalf of the persons in forming the company and may be, but need not be, one (1) of the persons.

(3) After formation of a limited liability company, a person becomes a member:

- (a) As provided in the operating agreement;
- (b) As the result of a transaction effective under chapter 18, title 30, Idaho Code;
- (c) With the consent of all the members; or
- (d) If, within ninety (90) consecutive days after the company ceases to have any members:
  - (i) The last person to have been a member, or the legal representative of that person, designates a person to become a member; and
  - (ii) The designated person consents to become a member.

(4) A person may become a member without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company.

#### History.

I.C., § 30-6-401, as added by 2008, ch. 176, § 1, p. 497.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

### OFFICIAL COMMENT

Most LLC statutes address in separate provisions: (i) how an LLC obtains its initial member or members; and (ii) how additional persons might later become members. This Act follows that approach. Subsections (a) and (b) [(1) and (2)] address the most common circumstances under which a limited liability company is formed — with one or more persons becoming members upon formation. Subsection (c) [not adopted by Idaho] addresses how a person becomes the initial member of an LLC whose certificate of organization was filed without there being any members. Subsection (d) [(3)] addresses how persons become members after an LLC has had at least one member.

For a discussion of the concept of a “shelf LLC” and this Act’s requirement that a limited liability company have at least one member upon formation, see the Comment to Section 201 [§ 30-6-201].

**Subsection (d)(4) [(3)(d)]** — The personal representative of the last member may designate her-, him-, or itself as the new member.

**Subsection (e) [(d)]** — To accommodate business practices and also because a limited liability company need not have a business purpose, this subsection permits so-called “non-economic members.”

### IDAHO REPORTER'S COMMENT

Shelf registrations of limited liability companies are not permitted in Idaho. See Idaho Reporter's Comments to Idaho Code § 30-6-201. As a result, RULLCA references to the subsection authorizing shelf registrations are not included in this section of the Idaho Act.

**30-6-402. Form of contribution.** — A contribution may consist of tangible or intangible property or other benefit to a limited liability company, including money, services performed, promissory notes, other agreements to contribute money or property, and contracts for services to be performed.

**History.**

I.C., § 30-6-402, as added by 2008, ch. 176, § 1, p. 497.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**OFFICIAL COMMENT**

**Source** — ULPA (2001) § 501, which derived from ULLCA § 401.

**IDAHO REPORTER'S COMMENT**

The issuance of LLC membership interests in consideration of “tangible or intangible property or other benefit to a limited liability company, including ... contracts for services to be performed” may violate the Idaho Constitution, which provides that “[n]o corporation shall issue stocks or bonds, except for labor done, services performed, or money or property actually received ...” Idaho Const. Art. XI § 9. Future services and contracts for future services do not qualify as permissible consideration for issuance of stock; nor do tangible or intangible benefits to the corporation other than labor, services, money or property. Property includes both real and personal property, including money, goods, chattels, things in action and evidence of debt. *Meholin v Carlson*, 17 Idaho 742, 107 P. 755 (1910). The term “corporation,” as used in Art. XI, is defined broadly “to include all associations and joint stock companies having or exercising any of the powers or privileges of corporations not possessed by individuals or partnerships.” Idaho Const. Art. XI § 16. LLCs and corporations share the characteristics (among others) of perpetual existence and limited liability of equity owners; and LLCs are arguably “corporations” for purposes of the constitutional limitations on valid consideration for the issuance of LLC membership interests. See *Intermountain Lloyds v. Diefendorf*, 51 Idaho 304, 5 P.2d 730 (1931) (Limited liability enjoyed by members of an association of insurance underwriters is “similar to that enjoyed by corporate stockholders [and] is a privilege not possessed by individuals or partnerships” under Idaho Const. Art. XI § 16).

**30-6-403. Liability for contributions.** — (1) A person's obligation to make a contribution to a limited liability company is not excused by the person's death, disability, or other inability to perform personally. If a person does not make a required contribution, the person or the person's estate is obligated to contribute money equal to the value of the part of the contribution which has not been made, at the option of the company.

(2) A creditor of a limited liability company which extends credit or otherwise acts in reliance on an obligation described in subsection (1) of this section may enforce the obligation.

**History.**

I.C., § 30-6-403, as added by 2008, ch. 176, § 1, p. 497.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**OFFICIAL COMMENT**

**Source:** ULLCA § 402, which is taken from RULPA § 502(b), which also gave rise to ULPA (2001) § 502.

**Subsection (a) [(1)]** — The reference to

“perform personally” is not limited to individuals but rather may refer to any legal person (including an entity) that has a non-delegable duty.

**30-6-404. Sharing of and right to distributions before dissolution.** — (1) Any distributions made by a limited liability company before its



dissolution and winding up must be in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 30-6-502, Idaho Code, and any charging order in effect under section 30-6-503, Idaho Code.

(2) A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

(3) A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in section 30-6-708(3), Idaho Code, a limited liability company may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

(4) If a member or transferee becomes entitled to receive a distribution, the member or transferee is entitled to all remedies available to a creditor of the limited liability company with respect to the distribution.

**History.**

I.C., § 30-6-404, as added by 2008, ch. 176, § 1, p. 498.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**OFFICIAL COMMENT**

This Act follows both the original ULLCA and ULP (2001) in omitting any default rule for allocation of losses. The Comment to ULP (2001), § 503 explains that omission as follows:

This Act has no provision allocating profits and losses among the partners. Instead, the Act directly apportions the right to receive distributions. Nearly all limited partnerships will choose to allocate profits and losses in order to comply with applicable tax, accounting and other regulatory re-

quirements. Those requirements, rather than this Act, are the proper source of guidance for that profit and loss allocation.

**Subsection (b) [(2)]** — The second sentence of this subsection accords with Section 603(a)(3) [§ 30-6-603(1)(c)] — upon dissociation a person is treated as a mere transferee of its own transferable interest. Like most *inter se* rules in this Act, this one is subject to the operating agreement. See Comment to Section 603(a)(3) [§ 30-6-603(a)(3)].

**30-6-405. Limitations on distribution.** — (1) A limited liability company may not make a distribution if after the distribution:

(a) The company would not be able to pay its debts as they become due in the ordinary course of the company's activities; or

(b) The company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved, wound up and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up and termination of members whose preferential rights are superior to those of persons receiving the distribution.

(2) A limited liability company may base a determination that a distribution is not prohibited under subsection (1) of this section on financial statements prepared on the basis of accounting practices and principles that

are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

(3) Except as otherwise provided in subsection (6) of this section, the effect of a distribution under subsection (1) of this section is measured:

(a) In the case of a distribution by purchase, redemption or other acquisition of a transferable interest in the company, as of the date money or other property is transferred or debt incurred by the company; and

(b) In all other cases, as of the date:

(i) The distribution is authorized, if the payment occurs within one hundred twenty (120) days after that date; or

(ii) The payment is made, if the payment occurs more than one hundred twenty (120) days after the distribution is authorized.

(4) A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the company's indebtedness to its general, unsecured creditors.

(5) A limited liability company's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of subsection (1) of this section if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to members under this section.

(6) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

(7) In subsection (1) of this section, "distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

#### **History.**

I.C., § 30-6-405, as added by 2008, ch. 176, § 1, p. 498.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

### **OFFICIAL COMMENT**

**Source** — ULP (2001) § 508, which was derived from ULLCA § 406, which was in turn derived from MBCA § 6.40.

**Subsection (b) [(2)]** — This subsection appears to involve a pure standard of ordinary care, in contrast with the more complicated approach stated in Section 409(c) [§ 30-6-409(3)].

**Subsection (g) [(7)]** — This exception applies only for the purposes of this section. See the Comment to Section 503(b)(2) [§ 30-6-

503(2)(b)]. The exception is derived from existing statutory provisions. See, e.g., DEL. CODE ANN., tit. 6, § 18-607(a) (2006) and VA. CODE ANN. § 13.1-1035(E) (2006). See also *In re Tri-River Trading, LLC*, 329 B.R. 252, 266, (8th Cir. BAP 2005), aff'd, 452 F.3d 756 (8th Cir. 2006) ("We know of no principle of law which suggests that a manager of a company is required to give up agreed upon salary to pay creditors when business turns bad.")

**30-6-406. Liability for improper distributions.** — (1) Except as otherwise provided in subsection (2) of this section, if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distribution made in

violation of section 30-6-405, Idaho Code, and in consenting to the distribution fails to comply with section 30-6-409, Idaho Code, the member or manager is personally liable to the company for the amount of the distribution that exceeds the amount that could have been distributed without the violation of section 30-6-405, Idaho Code.

(2) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one (1) or more other members, the liability stated in subsection (1) of this section applies to the other members and not the member that the operating agreement relieves of authority and responsibility.

(3) A person that receives a distribution knowing that the distribution to that person was made in violation of section 30-6-405, Idaho Code, is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under section 30-6-405, Idaho Code.

(4) A person against which an action is commenced because the person is liable under subsection (1) of this section may:

- (a) Implead any other person that is subject to liability under subsection (1) of this section and seek to compel contribution from the person; and
- (b) Implead any person that received a distribution in violation of subsection (3) of this section and seek to compel contribution from the person in the amount the person received in violation of subsection (3) of this section.

(5) An action under this section is barred if not commenced within two (2) years after the distribution.

**History.**

I.C., § 30-6-406, as added by 2008, ch. 176, § 1, p. 499.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**OFFICIAL COMMENT**

**Source** — Same derivation as Section 405 [§ 30-6-405].

Liability under this section is not affected by a person ceasing to be a member, manager or transferee after the time that the liability attaches.

**Subsection (b) [(2)]** — The operating agreement could not accomplish the “switch” in liability provided by this subsection, because the “switch” implicates the rights of

third parties under this Act. Section 110(c)(11) [§ 30-6-110(3)(k)].

**Subsections (c) and (d)(2) [(3) and (4)(b)]** — Liability could apply to a person who receives a distribution under a charging order, but only if the person meets the knowledge requirement. That situation is very unlikely unless the person with the charging order is also a member or manager.

**30-6-407. Management of limited liability company.** — (1) A limited liability company is a member-managed limited liability company unless the operating agreement:

(a) Expressly provides that:

- (i) The company is or will be “manager-managed”;
- (ii) The company is or will be “managed by managers”; or



- (iii) Management of the company is or will be “vested in managers”; or
- (b) Includes words of similar import.
- (2) In a member-managed limited liability company, as among the members, the following rules apply:
  - (a) The management and conduct of the company are vested in the members.
  - (b) Each member has equal rights in the management and conduct of the company’s activities.
  - (c) A difference arising among members as to a matter in the ordinary course of the activities of the company may be decided by a majority of the members.
  - (d) An act outside the ordinary course of the activities of the company may be undertaken only with the consent of all members.
  - (e) The operating agreement may be amended only with the consent of all members.
- (3) In a manager-managed limited liability company, as among the members and the managers, the following rules apply:
  - (a) Except as otherwise expressly provided in this chapter, any matter relating to the activities of the company is decided exclusively by the managers.
  - (b) Each manager has equal rights in the management and conduct of the activities of the company.
  - (c) A difference arising among managers as to a matter in the ordinary course of the activities of the company may be decided by a majority of the managers.
  - (d) The consent of all members is required to:
    - (i) Sell, lease, exchange or otherwise dispose of all, or substantially all, of the company’s property, with or without the good will, outside the ordinary course of the company’s activities;
    - (ii) Approve a merger, conversion or domestication under part 10 of this chapter;
    - (iii) Undertake any other act outside the ordinary course of the company’s activities; and
    - (iv) Amend the operating agreement.
  - (e) A manager may be chosen at any time by the consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the consent of a majority of the members without notice or cause.
  - (f) A person need not be a member to be a manager, but the dissociation of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member.
  - (g) A person’s ceasing to be a manager does not discharge any debt, obligation or other liability to the limited liability company or members which the person incurred while a manager.
- (4) An action requiring the consent of members under this chapter may be taken without a meeting, and a member may appoint a proxy or other

agent to consent or otherwise act for the member by signing an appointing record, personally or by the member's agent.

(5) The dissolution of a limited liability company does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the company loses the right to participate in management as a member and a manager.

(6) This chapter does not entitle a member to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the company.

#### History.

I.C., § 30-6-407, as added by 2008, ch. 176, § 1, p. 500.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

### OFFICIAL COMMENT

**Subsection (a) [(1)]** — This subsection follows implicitly from the definitions of “manager-managed” and “member-managed” limited liability companies, Section 102(10) and (12) [§ 30-6-102(11) and (13)], but is included here for the sake of clarity. Although this Act has eliminated the link between management structure and statutory apparent authority, Section 301 [§ 30-6-301], the Act retains the manager-managed and member-managed constructs as options for members to use to structure their *inter se* relationship.

**Subsection (b) [(2)]** — The subsection states default rules that, under Section 110 [§ 30-6-110], are subject to the operating agreement.

**Subsection (c) [(3)]** — Like subsection (b) [(2)], this subsection states default rules that, under Section 110 [§ 30-6-110], are subject to the operating agreement. For example, a limited liability company's operating agreement might state “This company is manager-managed,” Section 102(10)(i), while providing that managers must submit specified ordinary matters for review by the members.

The actual authority of an LLC's manager or managers is a question of agency law and depends fundamentally on the contents of the operating agreement and any separate management contract between the LLC and its manager or managers. These agreements are the primary source of the manifestations of the LLC (as principal) from which a manager (as agent) will form the reasonable beliefs that delimit the scope of the manager's actual authority. *RESTATEMENT (THIRD) OF AGENCY* § 3.01 (2006). See also *RESTATEMENT (SECOND) OF AGENCY* §§ 15, 26.

Other information may be relevant as well, such as the course of dealing within the LLC,

unless the operating agreement effectively precludes consideration of that information. See Section 110(a)(4) [§ 30-6-110(1)(d)] (stating that the operating agreement governs “the means and conditions for amending the operating agreement”) and the comment to that subparagraph, which states that:

[Although this] Act does not specially authorize the operating agreement to limit the sources in which terms of the operating agreement might be found or limit amendments to specified modes ... Paragraph (a)(4) [(1)(d)] could be read to encompass such authorization. Also, under Section 107 [§ 30-6-107] the parol evidence rule will apply to a written operating agreement containing an appropriate merger provision.

If the operating agreement and a management contract conflict, the reasonable manager will know that the operating agreement controls the extent of the manager's rightful authority to act for the LLC — despite any contract claims the manager might have. See Section 111(a)(2) [§ 30-6-110(1)(b)] (stating that the operating agreement governs “the rights and duties under this chapter of a person in the capacity of manager”) and the comment to that paragraph, which states:

Because the term “[o]perating agreement ... includes the agreement as amended or restated,” Section 102(13) [§ 30-6-102(15)], this paragraph gives the members the ongoing power to define the role of an LLC's managers. Power is not the same as right, however, and exercising the power provided by this paragraph might constitute a breach of a separate contract between the LLC and the manager.

See also *RESTATEMENT (THIRD) OF AGENCY* § 8.13, cmt. b (2006) and *RESTATEMENT (SECOND) OF*



AGENCY, § 432, cmt. b (stating that, when a principal's instructions to an agent contravene a contract between the principal and agent, the agent may have a breach of contract claim but has no right to act contrary to the principal's instructions).

If (i) an LLC's operating agreement merely states that the LLC is manager-managed and does not further specify the managerial responsibilities, and (ii) the LLC has only one manager, the actual authority analysis is simple. In that situation, this subsection:

- serves as “gap filler” to the operating agreement; and thereby
- constitutes the LLC's manifestation to the manager as to the scope of the manager's authority; and thereby
- delimits the manager's actual authority, subject to whatever subsequent manifestations the LLC may make to the manager (e.g., by a vote of the members, or an amendment of the operating agreement).

If the operating agreement states only that the LLC is manager-managed and the LLC has more than one manager, the question of actual authority has an additional aspect. It is necessary to determine what actual authority any one manager has to act alone.

Paragraphs (c)(2), (3), and (4) [(3)(b), (c), and (d)] combine to provide the answer. A single manager of a multi-manager LLC:

- has no actual authority to commit the LLC to any matter “outside the ordinary course of the company's activities,” paragraph (c)(4)(C) [(3)(d)(iii)], or any matter encompassed in paragraph (c)(4) [(3)(d)]; and
- has the actual authority to commit the LLC to any matter “in the ordinary course of the activities of the company,” paragraph (c)(3) [(3)(c)], unless the manager has reason to know that other managers might disagree or the manager has some other reason to know that consultation with fellow managers is appropriate.

The first point follows self-evidently from the language of paragraphs (c)(3) and (c)(4) [(3)(c) and (3)(d)]. In light of that language, no manager could reasonably believe to the contrary (unless the operating agreement provided otherwise).

The second point follows because:

- Subsection (c) [(3)] serves as the gap-filler manifestation from the LLC to its managers, and subsection (c) [(3)] does not require managers of a multi-manager LLC to act only in concert or after consultation.
- To the contrary, subject to the operating agreement:
  - paragraph (c)(2) [(3)(b)] expressly provides that “[e]ach manager has equal

rights in the management and conduct of the activities of the company,” and

- paragraph (c)(3) [(3)(b)] suggests that several (as well as joint) activity is appropriate on ordinary matters, so long as the manager acting in the matter has no reason to believe that the matter will be controversial among the managers and therefore requires a decision under paragraph (c)(3) [(3)(c)].

While the individual members of a corporate board of directors lack actual authority to bind the corporation, 2 WILLIAM MEADE FLETCHER, FLETCHER CYCLOPEDIA OF THE LAW OF CORPORATIONS, § 392 (noting “the overwhelming weight of authority”), subsection (c) [(3)] does not describe “board” management. Instead, subsection (c) [(3)] provides management rules derived from those that govern the members of a general partnership and multiple general partners of a limited partnership. RUPA, § 401 and ULPA (2001), § 406.

The common law of agency will also determine the apparent authority of an LLC's manager or managers, and in that analysis what the particular third party knows or has reason to know about the management structure and business practices of the particular LLC will always be relevant. RESTATEMENT (THIRD) OF AGENCY § 3.03 cmt. d (2006) (“The nature of an organization's business or activity is relevant to whether a third party could reasonably believe that a [manager] is authorized to commit the organization to a particular transaction.”).

As a general matter, however — i.e., as to the apparent authority of the position of LLC manager under this Act — courts may view the position as clothing its occupants with the apparent authority to take actions that reasonably appear within the ordinary course of the company's business. The actual authority analysis stated above supports that proposition; absent a reason to believe to the contrary, a third party could reasonably believe a manager to possess the authority contemplated by the gap-fillers of the statute. *But see* Section 102(9) [§ 30-6-102(10)], cmt. (stating that “confusion around the term ‘manager’ is common to almost all LLC statutes”).

**Subsection (c)(5) [(3)(e)]** — Under the default rule stated in this paragraph, dissolution of an entity that is a manager does not end the entity's status as manager. Contrast Section 602(4)(D) [§ 30-6-602(4)(d)] (referring to the expulsion of a member that is a partnership or limited liability company and authorizing the other members to expel, by unanimous consent, the dissolved partnership or limited liability company).

An LLC does not cease to be “manager-managed” simply because no managers are in place. In that situation, absent additional facts, the LLC is manager-managed and the



manager position is vacant. Non-manager members who exercise managerial functions during the vacancy (or at any other time) will have duties as determined by other law, most particularly the law of agency.

**Subsection (c)(7) [(3)(g)]** — The obligation to safeguard trade secrets and other confidential or proprietary information is incurred when the person is a manager, and a subsequent cessation does not entitle the person to usurp the information or use it to the prejudice of the LLC after the cessation.

**Subsection (e) [(5)]** — Under the default rules of this Act, it is not possible for a person to wrongfully cause dissolution (as distinguished from wrongfully dissociating). Compare Section 701 [§ 30-6-701] with Section 601(b) [§ 30-6-601(2)]. However, the operating agreement might contemplate wrongful dissolution, and this subsection would then

apply — unless the operating provides otherwise. Under the second sentence of this subsection, a person might lose the rights to act as a manager without automatically and formally ceasing to be denominated as a manager.

**Subsection (f) [(6)]** — This provision traces back to the 1914 Uniform Partnership Act, § 18(f) and is included for fear that its absence might be misinterpreted as implying a contrary rule.

This Act does not provide for remuneration to a manager of a manager-managed LLC. That issue is for the operating agreement, or a separate agreement between the LLC and the manager. A manager seeking compensation will have the burden of proving an agreement. For a case demonstrating how *not* to establish an agreement, see *Jandrain v. Lovald*, 351 B.R. 679 (D. S.D. 2006).

**30-6-408. Indemnification and insurance.** — (1) A limited liability company shall reimburse for any payment made and indemnify for any debt, obligation or other liability incurred by a member of a member-managed company or the manager of a manager-managed company in the course of the member's or manager's activities on behalf of the company, if, in making the payment or incurring the debt, obligation or other liability, the member or manager complied with the duties stated in sections 30-6-405 and 30-6-409, Idaho Code.

(2) A limited liability company may purchase and maintain insurance on behalf of a member or manager of the company against liability asserted against or incurred by the member or manager in that capacity or arising from that status even if, under section 30-6-110(7), Idaho Code, the operating agreement could not eliminate or limit the person's liability to the company for the conduct giving rise to the liability.

#### History.

I.C., § 30-6-408, as added by 2008, ch. 176, § 1, p. 501.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

### OFFICIAL COMMENT

**Subsection (a) [(1)]** — This subsection states a default rule, which corresponds to the default rules on management duties. In the default mode, the correspondence is appropriate, because otherwise the statutory rule on indemnification could undercut or even vitiate the statutory rules on duty. Both this subsection and the rules on duty are subject to the operating agreement.

This subsection does not expressly require a limited liability company to provide advances to cover expenses. However, in some jurisdictions the indemnity obligation might

be interpreted to include an obligation to make advances.

This subsection concerns only managers of manager-managed limited liability companies and members of member-managed companies. The definite article in the phrases "the member's" [paragraph (1)] and "the member" [paragraph (2)] refers back to the original phrase "A limited liability company shall reimburse ... and indemnify ... a member of a member-managed company ...". A limited liability company's obligation, if any, to reimburse or indemnify others (including non-

managing members of a manager-managed LLC and LLC employees) is a question for other law, including the law of agency.

**Subsection (b) [(2)]** — In contrast to subsection (a) [(1)], this subsection encompasses all members, not just members in a member-managed LLC.

This subsection's language is very broad

and authorizes an LLC to purchase insurance to cover, e.g., a manager's intentional misconduct. It is unlikely that such insurance would be available. For restrictions on the power of an operating agreement to provide for indemnification, see Section 110 [§ 30-6-110], particularly subsection (g) [(7)].

### **30-6-409. Standards of conduct for members and managers. —**

(1) A member of a member-managed limited liability company owes to the company and, subject to section 30-6-901(2), Idaho Code, the other members the fiduciary duties of loyalty and care stated in subsections (2) and (3) of this section.

(2) The duty of loyalty of a member in a member-managed limited liability company includes the duties:

(a) To account to the company and to hold as trustee for it any property, profit or benefit derived by the member:

(i) In the conduct or winding up of the company's activities;

(ii) From a use by the member of the company's property; or

(iii) From the appropriation of a limited liability company opportunity;

(b) To refrain from dealing with the company in the conduct or winding up of the company's activities as or on behalf of a person having an interest adverse to the company; and

(c) To refrain from competing with the company in the conduct of the company's activities before the dissolution of the company.

(3) Subject to the business judgment rule, the duty of care of a member of a member-managed limited liability company in the conduct and winding up of the company's activities is to act with the care that a person in a like position would reasonably exercise under similar circumstances and in a manner the member reasonably believes to be in the best interests of the company. In discharging this duty, a member may rely in good faith upon opinions, reports, statements or other information provided by another person that the member reasonably believes is a competent and reliable source for the information.

(4) A member in a member-managed limited liability company or a manager-managed limited liability company shall discharge the duties under this chapter or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(5) It is a defense to a claim under subsection (2)(b) of this section and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.

(6) All of the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

(7) In a manager-managed limited liability company, the following rules apply:

(a) Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members.



(b) The duty stated under subsection (2)(c) of this section continues until winding up is completed.

(c) Subsection (4) of this section applies to the members and managers.

(d) Subsection (6) of this section applies only to the members.

(e) A member does not have any fiduciary duty to the company or to any other member solely by reason of being a member.

#### History.

I.C., § 30-6-409, as added by 2008, ch. 176, § 1, p. 501.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53,

Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

#### Fiduciary Duties.

Whether a fiduciary has breached his duties of trust and loyalty is a question of fact. *Bushi v. Sage Health Care, PLLC*, 146 Idaho 764, 203 P.3d 694 (2009).

### OFFICIAL COMMENT

This section follows the structure of many LLC acts, first stating the duties of members in a member-managed limited liability company and then using that statement and a “switching” mechanism, subsection (g) [(7)], to allocate duties in a manager-managed company. The duties stated in this section are subject to the operating agreement, but Section 110 [§ 30-6-110] contains important limitations on the power of the operating agreement to affect fiduciary duties and the obligation of good faith.

This section contains several noteworthy developments in the law of unincorporated business organizations:

- fiduciary duty is “uncabined” — see the Comment to subsections (a) and (b) [(1) and (2)];
- the duty of care is not set at gross negligence — see the Comment to subsection (c) [(3)]; and
- the statutory endorsement of self-interest is omitted — see the Comment to section (e) [(5)].

The standards, duties, and obligations of this Section are subject to delineation, restriction, and, to some extent, elimination by the operating agreement. See Section 110 [§ 30-6-110].

**Subsections (a) and (b) [(1) and (2)]** — Until the promulgation of RUPA, it was almost axiomatic that: (i) fiduciary duties reflect judge-made law; and (ii) statutory formulations can express some of that law but do not exhaustively codify it. The original UPA was a prime example of this approach.

In an effort to respect freedom of contract, bolster predictability, and protect partnership agreements from second-guessing, the Conference decided that RUPA should fence or “cabin in” all fiduciary duties within a statutory formulation. That decision was followed without re-consideration in ULLCA and ULPA (2001).

This Act takes a different approach. After lengthy discussion in the drafting committee and on the floor of the 2006 Annual Meeting, the Conference decided that: (i) the “corral” created by RUPA does not fit in the very complex and variegated world of LLCs; and (ii) it is impracticable to cabin all LLC-related fiduciary duties within a statutory formulation.

As a result, this Act: (i) eschews “only” and “limited to” — the words RUPA used in an effort to exhaustively codify fiduciary duty; (ii) codifies the core of the fiduciary duty of loyalty; but (iii) does not purport to discern every possible category of overreaching. One important consequence is to allow courts to continue to use fiduciary duty concepts to police disclosure obligations in member-to-member and member-LLC transactions.

**Subsection (c) [(3)]** — Although ULLCA, § 409(c) followed RUPA, § 404(c) and provided a gross negligence standard of care, at least a plurality of LLC statutes use an ordinary care standard. Sandra K. Miller, *The Role of the Court in Balancing Contractual Freedom With the Need For Mandatory Constraints on Opportunistic and Abusive Conduct in the LLC*, 152 U. Pa. L. Rev. 1609, 1658 (May 2004) (containing two tables characterizing the standard of care under LLC statutes: 21 states with “good faith prudent person” language and 19 states using “gross negligence or willful misconduct” language); Elizabeth S. Miller and Thomas E. Rutledge, *The Duty of Finest Loyalty and Reasonable Decisions: The Business Judgment Rule in Unincorporated Business Organizations*, 30 DEL. J. CORP. L. 343, 366-368 (2005) (stating that “[a]pproximately eighteen state LLC statutes parallel language formerly used in the MBCA and require managers and managing members to act in good faith and exercise the care of an ordinarily prudent person in a



like position under similar circumstances”). See also William J. Callison, “*The Law Does Not Perfectly Comprehend . . .*”: *The Inadequacy of the Gross Negligence Duty of Care Standard in Unincorporated Business Organizations*, 94 Ky. L.J. 451, 452 (2005-2006) (“examin[ing] the gross negligence standard and find[ing] it wanting, particularly as it has intruded, largely unexamined and by drafting osmosis, into subsequent uniform acts governing limited partnerships and limited liability companies”).

In some circumstances, an unadorned standard of ordinary care is appropriate for those in charge of a business organization or similar, non-business enterprise. In others, the proper application of the duty of care must take into account the difficulties inherent in establishing an enterprise’s most fundamental policies, supervising the enterprise’s overall activities, or making complex business judgments. Corporate law subdivides circumstances somewhat according to the formal role exercised by the person whose conduct is later challenged (e.g., distinguishing the duties of directors from the duties of officers). LLC law cannot follow that approach, because a hallmark of the LLC entity is its structural flexibility.

This subsection, therefore, seeks ‘the best of both worlds’ — stating a standard of ordinary care but subjecting that standard to the business judgment rule to the extent circumstances warrant. The content and force of the business judgment rule vary across jurisdictions, and therefore the meaning of this subsection may vary from jurisdiction to jurisdiction.

That result is intended. In any jurisdiction, the business judgment rule’s application will vary depending on the nature of the challenged conduct. There is, for example, very little (if any) judgment involved when a person with managerial power acts (or fails to act) on an essentially ministerial matter. Moreover, under the law of many jurisdictions, the business judgment rule applies similarly across the range of business organizations. That is, the doctrine is sufficiently broad and conceptual so that the formality of organizational choice is less important in shaping the application of the rule than are the nature of the challenged conduct and the responsibilities and authority of the person whose conduct is being challenged.

This Act seeks therefore to invoke rather than unsettle whatever may be each jurisdiction’s approach to the business judgment rule.

**Subsection (d) [(4)]** — This subsection refers to the “contractual obligation of good faith and fair dealing” to emphasize that the obligation is not an invitation to re-write agreements among the members. As ex-

plained in the Comment to ULPA (2001), § 305(b):

The obligation of good faith and fair dealing is not a fiduciary duty, does not command altruism or self-abnegation, and does not prevent a partner from acting in the partner’s own self-interest. Courts should not use the obligation to change ex post facto the parties’ or this Act’s allocation of risk and power. To the contrary, in light of the nature of a limited partnership, the obligation should be used only to protect agreed-upon arrangements from conduct that is manifestly beyond what a reasonable person could have contemplated when the arrangements were made. . . . In sum, the purpose of the obligation of good faith and fair dealing is to protect the arrangement the partners have chosen for themselves, not to restructure that arrangement under the guise of safeguarding it.

At first glance, it may seem strange to apply a contractual obligation to statutory duties and rights — i.e., duties and rights “under this [act].” However, for the most part those duties and rights apply to relationships *inter se* the members and the LLC and function only to the extent not displaced by the operating agreement. In the contract-based organization that is an LLC, those statutory default rules are intended to function like a contract. Therefore, applying the contractual notion of good faith makes sense.

As to whether the obligation stated in this subsection applies to transferees, see the Comment to Section 112(b) [§ 30-6-112(2)].

**Subsection (e) [(5)]** — Section 409 [this section] omits a noteworthy provision, which, beginning with RUPA, has been standard in the uniform business entity acts. RUPA, ULLCA, ULPA (2001) each placed the following language in the subsection following the formulation of the obligation of good faith:

A member . . . does not violate a duty or obligation under this [act] or under the operating agreement merely because the member’s conduct furthers the member’s own interest.

This language is inappropriate in the complex and variegated world of LLCs. As a proposition of contract law, the language is axiomatic and therefore unnecessary. In the context of fiduciary duty, the language is at best incomplete, at worst wrong, and in any event confusing.

This Act’s subsection (e) [(5)] takes a very different approach, stating a well-established principle of judge-made law. Despite Section 107 [§ 30-6-107], the statement is not surplusage. Given this Act’s very detailed treatment of fiduciary duties and especially the Act’s very detailed treatment of the power of the operating agreement to modify fiduciary duties, the statement is important because its

absence might be confusing. (An *ex post* fairness justification is not the same as an *ex ante* agreement to modify, but the topics are sufficiently close for a danger of the affirmative pregnant.)

This Act also omits, as anachronistic and potentially confusing, any provision resembling ULLCA, § 409(f) (“A member of a member-managed company may lend money to and transact other business with the company. As to each loan or transaction, the rights and obligations of the member are the same as those of a person who is not a member, subject to other applicable law.”) See also ULPA (2001), § 112 (“A partner may lend money to and transact other business with the limited partnership and has the same rights and obligations with respect to the loan or other transaction as a person that is not a partner.”)

Those provisions originated to combat the notion that debts to partners were categorically inferior to debts to non-partner creditors. That notion has never been part of LLC law, and so a modern uniform LLC act need not include language combating the notion. Moreover, to the uninitiated the language can be confusing, because the words might: (i) seem to undercut the duty of loyalty, which they do not; and (ii) deflect attention from bankruptcy law and the law of fraudulent transfer, which assuredly can look askance at transactions between an entity and an “insider.”

**Subsection (f) [(6)]** — The operating agreement can provide additional or different methods of authorization or ratification, subject to the strictures of Section 110(e) [§ 30-6-110(5)]. See the Comment to that subsection.

**Subsection (g) [(7)]** — This is the “switching” mechanism, referred to in the introduction to this Comment.

**Subsection (g)(2) [(7)(b)]** — On the assumption that the members of a manager-managed LLC are dependent on the manager, this paragraph extends the duty longer than in a member-managed LLC.

**Subsection (g)(5) [(7)(e)]** — This paragraph merely negates a claim of fiduciary duty that is exclusively status-based and does not immunize misconduct.

**EXAMPLE:** Although a limited liability company is manager-managed, one member who is not a manager owns a controlling interest and effectively, albeit indirectly, controls the company’s activities. A member owning a minority interest brings an action for dissolution under Section 701(a)(5)(B) [§ 30-6-701(1)(e)(ii)] (oppression by “the managers or those members in control of the company”). The court wishes to understand a claim as one alleging a breach of fiduciary duty by the controlling member. Subsection (g)(5) [(7)(e)] does not preclude that approach.

### IDAHO REPORTER’S COMMENT

In Idaho, the business judgment rule has been recognized by the Courts and applied to the actions of directors of for-profit corporations. *Jordan v. Hunter*, 124 Idaho 899, 905, 865 P.2d 990, 996, fn. 3 (Ct. App. 1993). As applied to corporate directors, “the ‘business judgment rule’ immunizes the good faith acts of directors when the directors are acting within the powers of the corporation and within the exercise of their honest business judgment.” *Steelman v. Mallory*, 110 Idaho 510, 513, 716 P.2d 1282, 1285 (Idaho 1986), citing *Rywalt v. Writer Corp.*, 34 Colo. App. 334, 526 P.2d 316, 317 (1974) and *Tovrea Land & Cattle Co. v. Linsenmeyer*, 100 Ariz. 107, 412 P.2d 47, 62-63 (1956). Idaho Courts have applied the business judgment rule to actions involving entities other than business corporations. (See, e.g., *Weaver v. Millard*, 120 Idaho 692, 819 P. 2d 110 (Ct. App. 1991) (business judgment rule applied to actions of partner in partnership); *Leppaluoto v. Warm Springs Hollow Homeowners Association, Inc.*, 114 Idaho 3, 752 P.2d 605 (Idaho 1988) (rule applied to actions of directors of non-profit corporation); and *Hayden Lake Fire Protection Dist. v. Alcorn*, 141 Idaho 388, 111 P.3d 73 (Idaho 2005) (rule applied to actions of managers and directors of statutorily created State Insurance Fund, an “independent body corporate and politic”).)

**30-6-410. Right of members, managers and dissociated members to information.** — (1) In a member-managed limited liability company, the following rules apply:

(a) On reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the company, any record maintained by the company regarding the company’s activities, financial condition and other circumstances, to the extent the information is material to the member’s rights and duties under the operating agreement or this chapter.



(b) The company shall furnish to each member:

(i) Without demand, any information concerning the company's activities, financial condition and other circumstances which the company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or this chapter, except to the extent the company can establish that it reasonably believes the member already knows the information; and

(ii) On demand, any other information concerning the company's activities, financial condition and other circumstances, except to the extent the demand or information demanded is unreasonable or otherwise improper under the circumstances.

(c) The duty to furnish information under paragraph (b) of this subsection also applies to each member to the extent the member knows any of the information described in paragraph (b) of this subsection.

(2) In a manager-managed limited liability company, the following rules apply:

(a) The informational rights stated in subsection (1) of this section and the duty stated in subsection (1)(c) of this section apply to the managers and not the members.

(b) During regular business hours and at a reasonable location specified by the company, a member may obtain from the company and inspect and copy full information regarding the activities, financial condition and other circumstances of the company as is just and reasonable if:

(i) The member seeks the information for a purpose material to the member's interest as a member;

(ii) The member makes a demand in a record received by the company, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(iii) The information sought is directly connected to the member's purpose.

(c) Within ten (10) days after receiving a demand pursuant to paragraph (b)(ii) of this subsection, the company shall in a record inform the member that made the demand:

(i) Of the information that the company will provide in response to the demand and when and where the company will provide the information; and

(ii) If the company declines to provide any demanded information, the company's reasons for declining.

(d) Whenever this chapter or an operating agreement provides for a member to give or withhold consent to a matter, before the consent is given or withheld, the company shall, without demand, provide the member with all information that is known to the company and is material to the member's decision.

(3) On ten (10) days' demand made in a record received by a limited liability company, a dissociated member may have access to information to which the person was entitled while a member if the information pertains to the period during which the person was a member, the person seeks the information in good faith, and the person satisfies the requirements im-



posed on a member by subsection (2)(b) of this section. The company shall respond to a demand made pursuant to this subsection in the manner provided in subsection (2)(c) of this section.

(4) A limited liability company may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.

(5) A member or dissociated member may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the operating agreement or under subsection (7) of this section applies both to the agent or legal representative and the member or dissociated member.

(6) The rights under this section do not extend to a person as transferee.

(7) In addition to any restriction or condition stated in its operating agreement, a limited liability company, as a matter within the ordinary course of its activities, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the company has the burden of proving reasonableness.

#### History.

I.C., § 30-6-410, as added by 2008, ch. 176, § 1, p. 502.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

### OFFICIAL COMMENT

This section is derived from ULPA (2001), §§ 304 (rights to information of limited partners and former limited partners) and 407 (same re: general partners and former general partners). The rules stated here are what might be termed “quasi-default rules” — subject to some change by the operating agreement. Section 110(c)(6) [§ 30-6-110(3)(f)] (prohibiting unreasonable restrictions on the information rights stated in this section).

Although the rights and duties stated in this section are extensive, they may not necessarily be exhaustive. In some situations, some courts have seen owners' information rights as reflecting a fiduciary duty of those with management power. This Act's statement of fiduciary duties is not exhaustive. See Comment to Section 409 [§ 30-6-409] (explaining that this Act does not seek to “cabin in” all fiduciary duties). In contrast, the operating agreement has considerable “cabining in” power of its own. Section 110(d)(4) [§ 30-6-110(4)(d)].

**Subsection (a) [(1)]** — Paragraph 1 [(a)] states the rule pertaining to information memorialized in “record[s] maintained by the company”. Paragraph 2 [(b)] applies to information not in such a record. Appropriately,

paragraph (2) [(b)] sets a more demanding standard for those seeking information.

**Subsection (a)(2) and (3) [(1)(b) and (c)]** — In appropriate circumstances, violation of either or both of these provisions might cause a court to enjoin or even rescind action taken by the LLC, especially when the violation has interfered with an approval or veto mechanism involving member consent. *E.g.*, *Blue Chip Emerald LLC v. Allied Partners Inc.*, 299 A.D.2d 278, 279-280 (N.Y. App. Div. 2002) (invoking partnership law precedent as reflecting a duty of full disclosure and holding that “[a]bsent such full disclosure, the transaction is voidable”).

**Subsection (a)(2) [(1)(b)]** — Violation of this paragraph could give rise to a claim for damages against a member or manager [see subsection (b)(1) [(2)(a)]] who breaches the duties stated in Section 409 [§ 30-6-409] in causing or suffering the LLC to violate this paragraph.

**Subsection (a)(3) [(1)(a)]** — A member's violation of this paragraph is actionable in damages without need to show a violation of a duty stated in Section 409 [§ 30-6-409].

**Subsection (b)(1) [(2)(a)]** — This is a switching provision. A manager's violation of

the duty stated in subsection (a)(3) [(1)(c)] is actionable in damages without need to show a violation of a duty stated in Section 409 [§ 30-6-409].

**Subsection (b)(2) [(2)(b)]** — This paragraph refers to “information” rather than “records maintained by the company” — compare subsection (a) [(1)] — so in some circumstances the company might have an obligation to memorialize information. Such circumstances will likely be rare or at least unusual. Section 410 [§ 30-6-410] generally concerns providing existing information, not creating it. In any event, a member does not trigger the company’s obligation under this paragraph merely by satisfying subparagraphs (A) through (C) [(i) through (iii)]. The member must also satisfy the “just and reasonable” requirement.

**Subsection (c) [(3)]** — This section does not control the rights of the estate of a mem-

ber who dissociates by dying. In that circumstance, Section 504 [§ 30-6-504] controls.

**Subsection (g) [(7)]** — The phrase “as a matter within the ordinary course of its activities” means that a mere majority consent is needed to impose a restriction or condition. See Section 407(b)(3) and (c)(3) [§ 30-6-407(2)(c) and (3)(c)]. This approach is necessary, lest a requesting member (or manager-member) have the power to block imposition of a reasonable restriction or condition needed to prevent the requestor from abusing the LLC.

The burden of proof under this subsection contrasts with the burden of proof when someone claims that a term of an operating agreement violates Section 110(c)(6) [§ 30-6-110(3)(f)]. Under that subsection, as a matter of ordinary procedural law, the burden is on the person making the claim.

## PART 5. TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

**30-6-501. Nature of transferable interest.** — A transferable interest is personal property.

### History.

I.C., § 30-6-501, as added by 2008, ch. 176, § 1, p. 504.

**Compiler’s Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53,

Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**Collateral References.** Construction and application of limited liability company acts — Issues relating to formation of limited liability company and addition or disassociation of members thereto. 43 A.L.R.6th 611.

## OFFICIAL COMMENT

**Source** — This Article most directly follows ULPA (2001), Article 7, because ULPA (2001) reflects the Conference’s most recent thinking on the issues addressed here. However, ULPA (2001), Article 7 is quite similar in substance to ULLCA, Article 5, and both those Articles derive from Article 5 of RUPA.

Whether a transferable interest pledged as security is governed by Article 8 or 9 of the Uniform Commercial Code depends on the facts and the rules stated in those Articles.

This Act does not include ULLCA § 501(a), which provided: “A member is not a co-owner of, and has no transferable interest in, property of a limited liability company.” That language was a vestige of the “aggregate” notion of the law of general partnerships, and in a modern LLC statute would be at least surplusage and perhaps confusing as well.

**30-6-502. Transfer of transferable interest.** — (1) A transfer, in whole or in part, of a transferable interest:

- (a) Is permissible, provided however, that the transfer of a transferable interest in a professional company is not permissible absent compliance with section 30-6-201A(7), Idaho Code;
- (b) Does not by itself cause a member’s dissociation or a dissolution and winding up of the limited liability company’s activities; and
- (c) Subject to section 30-6-504, Idaho Code, does not entitle the transferee to:



- (i) Participate in the management or conduct of the company's activities; or
- (ii) Except as otherwise provided in subsection (3) of this section, have access to records or other information concerning the company's activities.

(2) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

(3) In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the company's transactions only from the date of dissolution.

(4) A transferable interest may be evidenced by a certificate of the interest issued by the limited liability company in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

(5) A limited liability company need not give effect to a transferee's rights under this section until the company has notice of the transfer.

(6) A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective as to a person having notice of the restriction at the time of transfer.

(7) Except as otherwise provided in section 30-6-602(4)(b), Idaho Code, when a member transfers a transferable interest, the transferor retains the rights of a member other than the interest in distributions transferred and retains all duties and obligations of a member.

(8) When a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the member's obligations under sections 30-6-403 and 30-6-406(3), Idaho Code, known to the transferee when the transferee becomes a member.

#### History.

I.C., § 30-6-502, as added by 2008, ch. 176, § 1, p. 504.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

### OFFICIAL COMMENT

One of the most fundamental characteristics of LLC law is its fidelity to the "pick your partner" principle. This section is the core of the Act's provisions reflecting and protecting that principle.

A member's rights in a limited liability company are bifurcated into economic rights (the transferable interest) and governance rights (including management rights, consent rights, rights to information, rights to seek judicial intervention). Unless the operating agreement otherwise provides, a member acting without the consent of all other members lacks both the power and the right to: (i) bestow membership on a non-member, Section 401(d) [§ 30-6-401(4)]; or (ii) transfer to a non-member anything other than some or all

of the member's transferable interest. Section 502(a)(3) [§ 30-6-502(1)(c)]. However, consistent with current law, a member may transfer governance rights to another member without obtaining consent from the other members. Thus, this Act does not itself protect members from control shifts that result from transfers among members (as distinguished from transfers to non-members who seek thereby to become members).

This section applies regardless of whether the transferor is a member, a transferee of a member, a transferee of a transferee, etc. See Section 102(21) [§ 30-6-102(26)] (defining "transferable interest" in terms of a right "originally associated with a person's capacity as a member" regardless of "whether or not



the person remains a member or continues to own any part of the right”).

**Subsection (a) [(1)]** — The definition of “transfer,” Section 102(20) [§ 30-6-102(25)], and this subsection’s reference to “in whole or in part” combine to mean that this section encompasses not only unconditional, permanent, and complete transfers but also temporary, contingent, and partial ones as well. Thus, for example, a charging order under Section 503 [§ 30-6-503] effects a transfer of part of the judgment debtor’s transferable interest, as does the pledge of a transferable interest as collateral for a loan and the gift of a life-interest in a member’s rights to distribution.

**Subsection (a)(2) [(1)(b)]** — Section 602(4)(B) [§ 30-6-602(4)(b)] creates a risk of dissociation via expulsion when a member transfers all of the member’s transferable interest.

**Subsection (a)(3) [(1)(c)]** — Mere transferees have no right to intrude as the members carry on their activities as members. When a member dies, other law may effect a transfer of the member’s interest to the member’s estate or personal representative. Section 504 [§ 30-6-504] contains special rules applicable to that situation.

**Subsection (b) [(2)]** — Amounts due under this subsection are of course subject to offset for any amount owed to the limited liability company by the member or dissociated member on whose account the distribution is made. As to whether an LLC may properly offset for claims against a transferor that was never a member is matter for other law, specifically the law of contracts dealing with assignments.

**Subsection (d) [(4)]** — The use of certificates can raise issues relating to Articles 8 and 9 of the Uniform Commercial Code.

**30-6-503. Charging order.** — (1) On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor’s transferable interest and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor.

(2) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection (1) of this section, the court may:

(a) Appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and

(b) Make all other orders necessary to give effect to the charging order.

(3) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale only obtains the transferable interest, does not thereby become a member, and is subject to section 30-6-502, Idaho Code.

(4) At any time before foreclosure under subsection (3) of this section, the member or transferee whose transferable interest is subject to a charging order under subsection (1) of this section may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(5) At any time before foreclosure under subsection (3) of this section, a limited liability company or one (1) or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(6) This chapter does not deprive any member or transferee of the benefit of any exemption laws applicable to the member’s or transferee’s transferable interest.

(7) This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.

#### History.

I.C., § 30-6-503, as added by 2008, ch. 176, § 1, p. 505.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

### OFFICIAL COMMENT

Charging order provisions appear in various forms in UPA, ULPA, RULPA, RUPA, ULLCA, and ULPA (2001). This section builds on those acts, while: (i) modernizing the language; (ii) making explicit certain points that have been at best implicit; and (iii) seeking to delineate more precisely the types of extraordinary circumstances that would have to exist before a court enforcing a charging order would be justified in interfering with an LLC's management or activities.

This section balances the needs of a judgment creditor of a member or transferee with the needs of the limited liability company and the members. The section achieves that balance by allowing the judgment creditor to collect on the judgment through the transferable interest of the judgment debtor while prohibiting interference in the management and activities of the limited liability company.

Under this section, the judgment creditor of a member or transferee is entitled to a charging order against the relevant transferable interest. While in effect, that order entitles the judgment creditor to whatever distributions would otherwise be due to the member or transferee whose interest is subject to the order. However, the judgment creditor has no say in the timing or amount of those distributions. The charging order does not entitle the judgment creditor to accelerate any distributions or to otherwise interfere with the management and activities of the limited liability company.

The operating agreement has no power to alter the provisions of this section to the prejudice of third parties. Section 110(c)(11) [§ 30-6-110(3)(k)].

**Subsection (a) [(1)]** — The phrase "judgment debtor" encompasses both members and transferees. As a matter of civil procedure and due process, an application for a charging order must be served both on the limited liability company and the member or transferee whose transferable interest is to be charged.

**Subsection (b) [(2)]** — Paragraph (2) [(b)] refers to "other orders" rather than "additional orders". Therefore, given appropriate

circumstances, a court may invoke either paragraph (1) or (2) [(a) or (b)] or both.

**Subsection (b)(1) [(2)(a)]** — The receiver contemplated here is not a receiver for the limited liability company, but rather a receiver for the distributions. The principal advantage provided by this paragraph is an expanded right to information. However, that right goes no further than "the extent necessary to effectuate the collections of distributions pursuant to a charging order."

**Subsection (b)(2) [(2)(b)]** — This paragraph must be understood in the context of the balance described in the introduction to this section's Comment. In particular, the court's power to make orders "that the circumstances may of the case may require" is limited to "giv[ing] effect to the charging order."

**Example:** A judgment creditor with a charging order believes that the limited liability company should invest less of its surplus in operations, leaving more funds for distributions. The creditor moves the court for an order directing the limited liability company to restrict re-investment. Subsection (b)(2) [(2)(b)] does not authorize the court to grant the motion.

**Example:** A judgment creditor with a judgment for \$10,000 against a member obtains a charging order against the member's transferable interest. Having been properly served with the order, the limited liability company nonetheless fails to comply and makes a \$3000 distribution to the member. The court has the power to order the limited liability company to pay \$3000 to the judgment creditor to "give effect to the charging order."

Under subsection (b)(2) [(2)(b)], the court also has the power to decide whether a particular payment is a distribution, because that decision determines whether the payment is part of a transferable interest subject to a charging order. To the extent a payment is not a distribution, it is not part of the transferable interest and is not subject to subsection (g) [(7)]. The payment is therefore



subject to whatever other creditor remedies may apply.

Section 405(g) [§ 30-6-405(7)] states a special exception to the definition of “distribution,” but that exception applies only “in subsection (1)” of Section 405 [§ 30-6-405]. Therefore, whether a charging order applies to “amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program,” Section 405(g) [§ 30-6-405(7)], is a question determined under this section, without regard to Section 405(g) [§ 30-6-405(7)]. To date, case law is scant, but there is authority holding that compensation is a distribution. *PB Real Estate, Inc. v. Dem II Properties*, 719 A.2d 73, 75 (Conn. App. Ct. 1998) (rejecting the defendants’ claim that the payments at issue were merely compensation for their services to their law firm, which was organized as an LLC; noting that the defendants’ characterization was at odds with the firm’s business records and tax returns; holding that the payments received were distributions subject to the charging order).

This Act has no specific rules for determining the fate or effect of a charging order when the limited liability company undergoes a merger, conversion, or domestication under Part 10. In the proper circumstances, such an organic change might trigger an order under subsection (b)(2) [(2)(b)].

**Subsection (c) [(3)]** — The phrase “that distributions under the charging order will not pay the judgment debt within a reasonable period of time” comes from case law. *See, e.g., Nigri v. Lotz*, 453 S.E.2d 780, 783 (Ga. Ct. App. 1995).

**Subsection (e) [(4)]** — This Act jettisons the confusing concept of redemption and substitutes an approach that more closely parallels the modern, real-world possibility of the

LLC or its members buying the underlying judgment (and thereby dispensing with any interference the judgment creditor might seek to inflict on the LLC). When possible, buying the judgment remains superior to the mechanism provided by this subsection, because: (i) this subsection requires full satisfaction of the underlying judgment, (ii) while the LLC or the other members might be able to buy the judgment for less than face value. On the other hand, this subsection operates without need for the judgment creditor’s consent, so it remains a valuable protection in the event a judgment creditor seeks to do mischief to the LLC.

Whether an LLC’s decision to invoke this subsection is “ordinary course” or “outside the ordinary course,” Section 407(b)(3) and (4) and (c)(3) and (4)(C) [§ 30-6-407(2)(c) and (d) and (3)(c) and (d)(iii)], depends on the circumstances. However, the involvement of this subsection does not by itself make the decision “outside the ordinary course.”

**Subsection (g) [(7)]** — This subsection does not override Article [Part] 9, which may provide different remedies for a secured creditor acting in that capacity. A secured creditor with a judgment might decide to proceed under Article [Part] 9 alone, under this section alone, or under both Article [Part] 9 and this section. In the last-mentioned circumstance, the constraints of this section would apply to the charging order but not to the Article [Part] 9 remedies.

This subsection is not intended to prevent a court from effecting a “reverse pierce” where appropriate. In a reverse pierce, the court conflates the entity and its owner to hold the entity liable for a debt of the owner. *Litchfield Asset Mgmt. Corp. v. Howell*, 799 A.2d 298, 312 (Conn. App. Ct. 2002) (approving a reverse pierce where a judgment debtor had established a limited liability company in a patent attempt frustrate the judgment creditor).

**30-6-504. Power of personal representative of deceased member.** — If a member dies, the deceased member’s personal representative or other legal representative may exercise the rights of a transferee provided in section 30-6-502(3), Idaho Code, and, for the purposes of settling the estate, the rights of a current member under section 30-6-410, Idaho Code.

**History.** I.C., § 30-6-504, as added by 2008, ch. 176, § 1, p. 505.

**Compiler’s Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

## OFFICIAL COMMENT

**Source:** ULPA (2001) § 704.

Section 410 [§ 30-6-410] pertains only to information rights.



## PART 6. MEMBER'S DISSOCIATION

**30-6-601. Member's power to dissociate — Wrongful dissociation.**

— (1) A person has the power to dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under section 30-6-602(1), Idaho Code.

(2) A person's dissociation from a limited liability company is wrongful only if the dissociation:

- (a) Is in breach of an express provision of the operating agreement; or
- (b) Occurs before the termination of the company and:
  - (i) The person withdraws as a member by express will;
  - (ii) The person is expelled as a member by judicial order under section 30-6-602(5), Idaho Code;
  - (iii) The person is dissociated under section 30-6-602(7)(a), Idaho Code, by becoming a debtor in bankruptcy; or
  - (iv) In the case of a person that is not a trust other than a business trust, an estate or an individual, the person is expelled or otherwise dissociated as a member because it willfully dissolved or terminated.

(3) A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to section 30-6-901, Idaho Code, to the other members for damages caused by the dissociation. The liability is in addition to any other debt, obligation or other liability of the member to the company or the other members.

**History.**

I.C., § 30-6-601, as added by 2008, ch. 176, § 1, p. 505.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53,

Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**Collateral References.** Construction and application of limited liability company acts — Issues relating to formation of limited liability company and addition or disassociation of members thereto. 43 A.L.R.6th 611.

**OFFICIAL COMMENT**

**Source** — ULPA (2001) § 604, which is based on RUPA Section 602. ULLCA § 602 is functionally identical in some respects but is

not a good overall source, because that section presupposes the term/at-will paradigm.

**30-6-602. Events causing dissociation.** — A person is dissociated as a member from a limited liability company when:

- (1) The company has notice of the person's express will to withdraw as a member, but, if the person specified a withdrawal date later than the date the company had notice, on that later date;
- (2) An event stated in the operating agreement as causing the person's dissociation occurs;
- (3) The person is expelled as a member pursuant to the operating agreement;

(4) The person is expelled as a member by the unanimous consent of the other members if:

(a) It is unlawful to carry on the company's activities with the person as a member;

(b) There has been a transfer of all of the person's transferable interest in the company, other than:

(i) A transfer for security purposes; or

(ii) A charging order in effect under section 30-6-503, Idaho Code, which has not been foreclosed;

(c) The person is a corporation and, within ninety (90) days after the company notifies the person that it will be expelled as a member because the person has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the certificate of dissolution has not been revoked or its charter or right to conduct business has not been reinstated; or

(d) The person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(5) On application by the company, the person is expelled as a member by judicial order because the person:

(a) Has engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the company's activities;

(b) Has willfully or persistently committed, or is willfully and persistently committing, a material breach of the operating agreement or the person's duties or obligations under section 30-6-409, Idaho Code; or

(c) Has engaged in, or is engaging, in conduct relating to the company's activities which makes it not reasonably practicable to carry on the activities with the person as a member;

(6) In the case of a person who is an individual:

(a) The person dies; or

(b) In a member-managed limited liability company:

(i) A guardian or general conservator for the person is appointed; or

(ii) There is a judicial order that the person has otherwise become incapable of performing the person's duties as a member under this chapter or the operating agreement;

(7) In a member-managed limited liability company, the person:

(a) Becomes a debtor in bankruptcy;

(b) Executes an assignment for the benefit of creditors; or

(c) Seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the person or of all or substantially all of the person's property;

(8) In the case of a person that is a trust or is acting as a member by virtue of being a trustee of a trust, the trust's entire transferable interest in the company is distributed;

(9) In the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the company is distributed;

(10) In the case of a member that is not an individual, partnership, limited liability company, corporation, trust or estate, the termination of the member;

(11) The company participates in a merger under chapter 18, title 30, Idaho Code, if:

(a) The company is not the surviving entity; or

(b) Otherwise as a result of the merger, the person ceases to be a member;

(12) The company participates in a conversion under chapter 18, title 30, Idaho Code;

(13) The company participates in a domestication under chapter 18, title 30, Idaho Code, if, as a result of the domestication, the person ceases to be a member;

(14) The company terminates; or

(15) In the case of a professional company, restrictions or limitations are placed upon a member's ability to continue to render professional services.

#### **History.**

I.C., § 30-6-602, as added by 2008, ch. 176, § 1, p. 506.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53,

Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**Collateral References.** Construction and application of limited liability company acts — Issues relating to formation of limited liability company and addition or disassociation of members thereto. 43 A.L.R.6th 611.

### **OFFICIAL COMMENT**

**Source** — ULLCA § 601; RUPA Section 601; ULPA (2001) §§ 601 and 603.

**Paragraph (4)(B) [(4)(b)]** — Under this paragraph (unless the operating agreement provides otherwise), a member's transferee can protect itself from the vulnerability of

"bare transferee" status by obligating the member/transferee to retain a 1% interest and then to exercise its governance rights (including the right to bring a derivative suit) to protect the transferee's interests.

**30-6-603. Effect of person's dissociation as member.** — (1) When a person is dissociated as a member of a limited liability company:

(a) The person's right to participate as a member in the management and conduct of the company's activities terminates;

(b) If the company is member-managed, the person's fiduciary duties as a member end with regard to matters arising and events occurring after the person's dissociation; and

(c) Subject to section 30-6-504, Idaho Code, and chapter 18, title 30, Idaho Code, any transferable interest owned by the person immediately before dissociation in the person's capacity as a member is owned by the person solely as a transferee.

(2) A person's dissociation as a member of a limited liability company does not of itself discharge the person from any debt, obligation or other liability to the company or the other members which the person incurred while a member.

#### **History.**

I.C., § 30-6-603, as added by 2008, ch. 176, § 1, p. 507.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this section should take effect on and after July 1,



2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53,

Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

### OFFICIAL COMMENT

**Source** — ULP (2001) § 605, which was drawn from RUPA Section 603(b).

**Subsection (a) [(1)]** — This provision makes no reference to power-to-bind matters, because the Act provides that a member *qua* member has no power to bind the LLC. Section 301 [§ 30-6-301].

**Subsection (a)(2) [(1)(b)]** — This provision applies only when the limited liability company is member-managed, because in a manager-managed LLC these duties do not apply to a member *qua* member. Section 409(g)(5) [§ 30-6-409(7)(e)].

**Subsection (a)(3) [(1)(c)]** — This paragraph accords with Section 404(b) [§ 30-6-404(2)] — dissociation does not entitle a person to any distribution. Like most *inter se* rules in this Act, this one is subject to the

operating agreement. For example, the operating agreement has the power to provide for the buy out of a person's transferable interest in connection with the person's dissociation.

**Subsection (b) [(2)]** — In a member-managed limited liability company, the obligation to safeguard trade secrets and other confidential or proprietary information is incurred when a person is a member. A subsequent dissociation does not entitle the person to usurp the information or use it to the prejudice of the LLC after the dissociation. (In a manager-managed LLC, any obligations of a non-manager member *viz a viz* proprietary information would be a matter for the operating agreement, the obligation of good faith, or other law.)

## PART 7. DISSOLUTION AND WINDING UP

**30-6-701. Events causing dissolution.** — (1) A limited liability company is dissolved, and its activities must be wound up, upon the occurrence of any of the following:

- (a) An event or circumstance that the operating agreement states causes dissolution;
  - (b) The consent of all the members;
  - (c) The passage of ninety (90) consecutive days during which the company has no members;
  - (d) On application by a member, the entry by the district court of an order dissolving the company on the grounds that:
    - (i) The conduct of all or substantially all of the company's activities is unlawful; or
    - (ii) It is not reasonably practicable to carry on the company's activities in conformity with the certificate of organization and the operating agreement; or
  - (e) On application by a member, the entry by the district court of an order dissolving the company on the grounds that the managers or those members in control of the company:
    - (i) Have acted, are acting, or will act in a manner that is illegal or fraudulent; or
    - (ii) Have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.
- (2) In a proceeding brought under subsection (1)(e) of this section, the district court may order a remedy other than dissolution.

#### History.

I.C., § 30-6-701, as added by 2008, ch. 176, § 1, p. 508.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this section should take effect on and after July 1,

2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

#### **Attorney Fees.**

Court found that “irreparable injury” under subsection (1)(a) of § 53-643 (see now this section) was different from “irreparable damage” under the applicable operating agreement in a dissolution action; whereas “irreparable injury” involves a threat to the ability of a company to continue to operate, irreparable

damage is tied to actions one party to the agreement might seek to enjoin or compel to preserve or increase the value of their ownership; therefore, appellant’s dissolution action did not meet the standard set forth in the operating agreement for an award of costs and fees. *Henderson v. Henderson Inv. Props., LLC*, 148 Idaho 638, 227 P.3d 568 (2010).

**Collateral References.** Construction and application of limited liability company acts — Issues relating to dissolution and winding up of affairs of limited liability company. 49 A.L.R.6th 1.

### **OFFICIAL COMMENT**

**Subsection (a)(4) [(1)(d)]** — The standard stated here is conventional, and this subsection (a)(4) [(1)(d)] is non-waivable. Section 110(c)(7) [§ 30-6-110(3)(g)].

**Subsection (a)(5) [(1)(e)]** — ULLCA § 801(4)(v) contains a comparable provision, although that provision also gives standing to dissociated members. Even in non-ULLCA states, courts have begun to apply close corporation “oppression” doctrine to LLCs.

This provision’s reference to “those members in control of the company” implies that such members have a duty to avoid acting oppressively toward fellow members.

Section (a)(5) [(1)(e)] is non-waivable. See Section 110(c)(7) [§ 30-6-110(3)(g)].

**Subsection (b) [(2)]** — In the close corporation context, many courts have reached this position without express statutory authority, most often with regard to court-ordered buy-outs of oppressed shareholders. This subsection saves courts and litigants the trouble of re-inventing that wheel in the LLC context. However, unlike, subsection (a)(4) and (5) [(1)(d) and (e)], subsection (b) [(2)] can be overridden by the operating agreement. Thus, the members may agree to restrict a or eliminate a court’s power to craft a lesser remedy, even to the extent of confining the court (and themselves) to the all-or-nothing remedy of dissolution.

**30-6-702. Winding up.** — (1) A dissolved limited liability company shall wind up its activities, and the company continues after dissolution only for the purpose of winding up.

(2) In winding up its activities, a limited liability company:

(a) Shall discharge the company’s debts, obligations or other liabilities, settle and close the company’s activities, and marshal and distribute the assets of the company; and

(b) May:

(i) Deliver to the secretary of state for filing a statement of dissolution stating the name of the company and that the company is dissolved;

(ii) Preserve the company activities and property as a going concern for a reasonable time;

(iii) Prosecute and defend actions and proceedings, whether civil, criminal or administrative;

(iv) Transfer the company’s property;

(v) Settle disputes by mediation or arbitration;

(vi) Deliver to the secretary of state for filing a statement of termination stating the name of the company and that the company is terminated; and

(vii) Perform other acts necessary or appropriate to the winding up.

(3) If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities of the company. If the person does so, the person has the powers of

a sole manager under section 30-6-407(3), Idaho Code, and is deemed to be a manager for the purposes of section 30-6-304(1)(b), Idaho Code.

(4) If the legal representative under subsection (3) of this section declines or fails to wind up the company's activities, a person may be appointed to do so by the consent of transferees owning a majority of the right to receive distributions as transferees at the time the consent is to be effective. A person appointed under this subsection:

(a) Has the powers of a sole manager under section 30-6-407(3), Idaho Code, and is deemed to be a manager for the purposes of section 30-6-304(1)(b), Idaho Code; and

(b) Shall promptly deliver to the secretary of state for filing an amendment to the company's certificate of organization to:

(i) State that the company has no members;

(ii) State that the person has been appointed pursuant to this subsection to wind up the company; and

(iii) Provide the street and mailing addresses of the person.

(5) The district court may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the company's activities:

(a) On application of a member, if the applicant establishes good cause;

(b) On the application of transferee, if:

(i) The company does not have any members;

(ii) The legal representative of the last person to have been a member declines or fails to wind up the company's activities; and

(iii) Within a reasonable time following the dissolution a person has not been appointed pursuant to subsection (3) of this section; or

(c) In connection with a proceeding under section 30-6-701(1)(d) or (e), Idaho Code.

#### **History.**

I.C., § 30-6-702, as added by 2008, ch. 176, § 1, p. 508.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53,

Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**Collateral References.** Construction and application of limited liability company acts — Issues relating to dissolution and winding up of affairs of limited liability company. 49 A.L.R.6th 1.

### **OFFICIAL COMMENT**

**Source** — ULPA (2001) § 803, which was based on RUPA Sections 802 and 803.

Because under this Act the power to bind a limited liability company to a third party is primarily a matter of agency law, Section 301 § 30-6-301], Comment, this Act has no need of provisions delineating the effect of dissolution on a member or manager's power to bind.

**Subsection (b)(2)(A) and (F) [(2)(b)(i) and (v)]** — For the constructive notice effect of a statement of dissolution or termination, see Section 103(d)(2)(A) and (B) [§ 30-6-103(4)(b)(i) and (ii)].

**30-6-703. Known claims against dissolved limited liability company.** — (1) Except as otherwise provided in subsection (4) of this section, a dissolved limited liability company may give notice of a known claim



under subsection (2) of this section, which has the effect as provided in subsection (3) of this section.

(2) A dissolved limited liability company may in a record notify its known claimants of the dissolution. The notice must:

- (a) Specify the information required to be included in a claim;
- (b) Provide a mailing address to which the claim is to be sent;
- (c) State the deadline for receipt of the claim, which may not be less than one hundred twenty (120) days after the date the notice is received by the claimant; and
- (d) State that the claim will be barred if not received by the deadline.

(3) A claim against a dissolved limited liability company is barred if the requirements of subsection (2) of this section are met and:

- (a) The claim is not received by the specified deadline; or
- (b) If the claim is timely received but rejected by the company:
  - (i) The company causes the claimant to receive a notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the company to enforce the claim within ninety (90) days after the claimant receives the notice; and
  - (ii) The claimant does not commence the required action within the ninety (90) days.

(4) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on that date is contingent.

**History.**

I.C., § 30-6-703, as added by 2008, ch. 176, § 1, p. 509.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**OFFICIAL COMMENT**

**Source** — ULPAA (2001) § 806, which was based on ULLCA § 807, which in turn was based on MBCA § 14.06.

**30-6-704. Other claims against dissolved limited liability company.** — (1) A dissolved limited liability company may publish notice of its dissolution and request persons having claims against the company to present them in accordance with the notice.

(2) The notice authorized by subsection (1) of this section must:

- (a) Be published at least once in a newspaper of general circulation in the county in this state in which the dissolved limited liability company's principal office is located or, if it has none in this state, in the county in which the company's designated office is or was last located;
- (b) Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; and
- (c) State that a claim against the company is barred unless an action to enforce the claim is commenced within five (5) years after publication of the notice.

(3) If a dissolved limited liability company publishes a notice in accor-

dance with subsection (2) of this section, unless the claimant commences an action to enforce the claim against the company within five (5) years after the publication date of the notice, the claim of each of the following claimants is barred:

- (a) A claimant that did not receive notice in a record under section 30-6-703, Idaho Code;
  - (b) A claimant whose claim was timely sent to the company but not acted on; and
  - (c) A claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.
- (4) A claim not barred under this section may be enforced:
- (a) Against a dissolved limited liability company, to the extent of its undistributed assets; and
  - (b) If assets of the company have been distributed after dissolution, against a member or transferee to the extent of that person's proportionate share of the claim or of the assets distributed to the member or transferee after dissolution, whichever is less, but a person's total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person after dissolution.

**History.**

I.C., § 30-6-704, as added by 2008, ch. 176, § 1, p. 510.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**OFFICIAL COMMENT**

**Source** — ULP (2001) § 807, which was based on ULLCA § 808, which in turn was based on MBCA § 14.07.

**Subsection (d)(2) [(4)(b)]** — Liability under this paragraph extends to those who have received distributions under a charging order.

*See* Comment to 502(a) [§ 30-6-502(1)] (explaining that the beneficiary of a charging order is a transferee). Unlike Section 406(c) [§ 30-6-406(3)] (recapture of improper interim distributions), this paragraph contains no "knowledge" element.

**30-6-705. Grounds for administrative dissolution, procedure and effect.** — (1) The secretary of state may administratively dissolve a limited liability company if:

- (a) The limited liability company does not deliver its annual report to the secretary of state by the date on which it is due;
- (b) The limited liability company is without a registered agent for sixty (60) days or more; or
- (c) The secretary of state has credible information that the limited liability company has failed to notify the secretary of state within sixty (60) days after the occurrence that its registered agent has been changed or that its registered agent has resigned.

(2) If the secretary of state determines that one (1) or more grounds exist under this section for dissolving a limited liability company, the secretary of state shall give notice of the determination to the limited liability company by first class mail addressed to its mailing address as indicated on its most

recent annual report or, if the limited liability company has not yet filed an annual report, to its registered agent.

(3) If the limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty (60) days after receipt of the notice of determination, the secretary of state shall administratively dissolve the limited liability company by noting the fact of dissolution and the effective date thereof in his records. The secretary of state shall give notice of the dissolution to the limited liability company by first class mail addressed to its mailing address as indicated on its most recent annual report or, if the limited liability company has not yet filed an annual report, to its registered agent.

(4) A limited liability company administratively dissolved continues its legal existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under sections 30-6-702 and 30-6-708, Idaho Code, and notify claimants under sections 30-6-703 and 30-6-704, Idaho Code.

(5) The administrative dissolution of a limited liability company does not terminate the authority of its registered agent.

**History.**

I.C., § 30-6-705, as added by 2008, ch. 176, § 1, p. 510.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**OFFICIAL COMMENT**

**Source** — ULPA (2001) § 809, which was based on ULLCA §§ 809 and 810. *See also* RMBCA §§ 14.20 and 14.21.

**30-6-706. Reinstatement following administrative dissolution. —**

(1) A limited liability company that has been administratively dissolved may apply to the secretary of state for reinstatement within ten (10) years after the effective date of dissolution. The application must be delivered to the secretary of state for filing and state:

- (a) The name of the company and the effective date of its dissolution;
- (b) That the grounds for dissolution have been eliminated; and
- (c) That the company's name satisfies the requirements of section 30-6-108, Idaho Code.

(2) If the secretary of state determines that an application under subsection (1) of this section contains the required information and that the information is correct, the secretary of state shall prepare a certificate of reinstatement that states this determination, file the original of the certificate of reinstatement, and mail a copy to the limited liability company.

(3) When a reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company may resume its activities as if the dissolution had not occurred.



**History.**  
I.C., § 30-6-706, as added by 2008, ch. 176, § 1, p. 511.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

OFFICIAL COMMENT

**Source** — ULPA (2001) § 810, which was based on ULLCA § 811. *See also* RMBCA Section 14.22.

**30-6-707. Appeal from rejection of reinstatement.** — (1) If the secretary of state denies a limited liability company's application for reinstatement following administrative dissolution, the secretary of state shall mail the company a copy of the notice that reinstatement has been denied.

(2) Within thirty (30) days after mailing of a notice of denial of reinstatement under subsection (1) of this section, a limited liability company may appeal from the denial by petitioning the district court of Ada county to set aside the dissolution. The petition must be served on the secretary of state and contain a copy of the secretary of state's notice of dissolution, the company's application for reinstatement, and the secretary of state's notice of denial.

(3) The district court may, if grounds exist, order the secretary of state to reinstate a dissolved limited liability company or take other action the court considers appropriate.

**History.**  
I.C., § 30-6-707, as added by 2008, ch. 176, § 1, p. 512.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

OFFICIAL COMMENT

**Source** — ULPA (2001) § 811, which was based on ULLCA § 812.

This section uses "rejection" rather than "denial" (the word used by both ULPA (2001)

and ULLCA). The change is to avoid confusion with a "statement of denial" under Section 302 [§ 30-6-302].

**30-6-708. Distribution of assets in winding up limited liability company's activities.** — (1) In winding up its activities, a limited liability company must apply its assets to discharge its obligations to creditors, including members that are creditors.

(2) After a limited liability company complies with subsection (1) of this section, any surplus must be distributed in the following order, subject to any charging order in effect under section 30-6-503, Idaho Code:

(a) To each person owning a transferable interest that reflects contributions made by a member and not previously returned, an amount equal to the value of the unreturned contributions; and

(b) In equal shares among members and dissociated members, except to

the extent necessary to comply with any transfer effective under section 30-6-502, Idaho Code.

(3) If a limited liability company does not have sufficient surplus to comply with subsection (2)(a) of this section, any surplus must be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.

(4) All distributions made under subsections (2) and (3) of this section must be paid in money.

**History.**

I.C., § 30-6-708, as added by 2008, ch. 176, § 1, p. 512.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**OFFICIAL COMMENT**

**Source:** ULLCA § 806, restyled.

**Subsection (a) [(1)]** — This section is mostly not a default rule. *See* Section 110(c)(11) [§ 30-6-110(3)(k)] (stating that “except as provided in Section 30-6-112(2), [the operating agreement may not] restrict the rights under this chapter of a person other than a member or manager”). However, if the creditors are willing, a dissolved limited liability company may certainly make agree-

ments with them specifying the terms under which the LLC will “discharge its obligations to creditors.”

**Subsections (b), (c) and (d) [(2), (3), and (4)]** — These subsection provide default rules. Distributions under these subsections (or otherwise under the operating agreement) are subject to Section 503 [§ 30-6-503] (charging orders).

**PART 8. FOREIGN LIMITED LIABILITY COMPANIES**

**30-6-801. Governing law.** — (1) The law of the state or other jurisdiction under which a foreign limited liability company is formed governs:

(a) The internal affairs of the company; and

(b) The liability of a member as member and a manager as manager for the debts, obligations or other liabilities of the company; provided however, that a foreign professional company rendering services in this state shall be subject to the laws of this state and the code of ethics or professional responsibility which are applicable to the professions in which such professional company is rendering services in this state.

(2) A foreign limited liability company may not be denied a certificate of authority by reason of any difference between the law of the jurisdiction under which the company is formed and the law of this state.

(3) A certificate of authority does not authorize a foreign limited liability company to engage in any business or exercise any power that a limited liability company may not engage in or exercise in this state.

**History.**

I.C., § 30-6-801, as added by 2008, ch. 176, § 1, p. 512.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

## OFFICIAL COMMENT

**Subsection (a) [(1)]** — This Section parallels the formulation stated in Section 106 for a domestic limited liability company.

**Subsection (a)(2) [(1)(b)]** — This provision does not pertain to the “internal shields” of a foreign “series” LLC, because those shields do not concern the liability of mem-

bers or managers for the obligations of the LLC. Instead, those shields seek to protect specified assets of the LLC (associated with one series) from being available to satisfy specified obligations of the LLC (associated with another series). See the Prefatory Note, *No Provision for “Series” LLCs*.

**30-6-802. Application for certificate of authority.** — (1) A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must state:

- (a) The name of the company and, if the name does not comply with section 30-6-108, Idaho Code, an alternate name adopted pursuant to section 30-6-805(1), Idaho Code;
- (b) The name of the state or other jurisdiction under whose law the company is formed;
- (c) The street and mailing addresses of the company’s principal office and, if the law of the jurisdiction under which the company is formed requires the company to maintain an office in that jurisdiction, the street and mailing addresses of the required office;
- (d) The information required by section 30-405(1), Idaho Code; and
- (e) The name and mailing address of at least one (1) member or manager.

(2) A foreign limited liability company shall deliver with a completed application under subsection (1) of this section a certificate of existence or a record of similar import signed by the secretary of state or other official having custody of the company’s publicly filed records in the state or other jurisdiction under whose law the company is formed.

**History.**

I.C., § 30-6-802, as added by 2008, ch. 176, § 1, p. 513.

**Compiler’s Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

## OFFICIAL COMMENT

**Source** — ULPA (2001) § 902, which was based on ULLCA § 1002.

**30-6-803. Activities not constituting transacting business.** —

(1) Activities of a foreign limited liability company which do not constitute transacting business in this state within the meaning of this part include:

- (a) Maintaining, defending or settling an action or proceeding;
- (b) Carrying on any activity concerning its internal affairs, including holding meetings of its members or managers;
- (c) Maintaining accounts in financial institutions;
- (d) Maintaining offices or agencies for the transfer, exchange and registration of the company’s own securities or maintaining trustees or depositories with respect to those securities;



- (e) Selling through independent contractors;
- (f) Soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (g) Creating or acquiring indebtedness, mortgages or security interests in real or personal property;
- (h) Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts and holding, protecting or maintaining property so acquired;
- (i) Conducting an isolated transaction that is completed within thirty (30) days and is not in the course of similar transactions; and
- (j) Transacting business in interstate commerce.

(2) For purposes of this part, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (1) of this section, constitutes transacting business in this state.

(3) This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation or regulation under law of this state other than this chapter.

**History.**

I.C., § 30-6-803, as added by 2008, ch. 176, § 1, p. 513.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**OFFICIAL COMMENT**

**Source** — ULPA (2001) § 903, which was based on ULLCA § 1003.

**30-6-804. Filing of certificate of authority.** — Unless the secretary of state determines that an application for a certificate of authority does not comply with the filing requirements of this chapter, the secretary of state, upon payment of all filing fees, shall file the application of a foreign limited liability company, prepare, sign and file a certificate of authority to transact business in this state, and send a copy of the filed certificate, together with a receipt for the fees, to the company or its representative.

**History.**

I.C., § 30-6-804, as added by 2008, ch. 176, § 1, p. 514.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**OFFICIAL COMMENT**

**Source** — ULPA (2001) § 904, which was based on ULLCA § 1004 and RULPA § 903.

**30-6-805. Noncomplying name of foreign limited liability company.** — (1) A foreign limited liability company whose name does not

comply with section 30-6-108, Idaho Code, may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternate name that complies with section 30-6-108, Idaho Code. A foreign limited liability company that adopts an alternate name under this subsection and obtains a certificate of authority with the alternate name need not comply with chapter 5, title 53, Idaho Code. After obtaining a certificate of authority with an alternate name, a foreign limited liability company shall transact business in this state under the alternate name unless the company is authorized under chapter 5, title 53, Idaho Code, to transact business in this state under another name.

(2) If a foreign limited liability company authorized to transact business in this state changes its name to one that does not comply with section 30-6-108, Idaho Code, it may not thereafter transact business in this state until it complies with subsection (1) of this section and obtains an amended certificate of authority.

**History.**

I.C., § 30-6-805, as added by 2008, ch. 176, § 1, p. 514.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**OFFICIAL COMMENT**

**Source** — ULPA (2001) § 905, which was based on ULLCA § 1005.

**30-6-806. Revocation of certificate of authority.** — (1) A certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the secretary of state in the manner provided in subsections (2) and (3) of this section, if the company does not:

- (a) Deliver its annual report by the date on which it is due as required under section 30-6-209, Idaho Code;
- (b) Appoint and maintain a registered agent; or
- (c) Deliver for filing a statement of a change under section 30-408, Idaho Code, within thirty (30) days after a change has occurred in the name or address of the registered agent.

(2) To revoke a certificate of authority of a foreign limited liability company, the secretary of state must mail a notice of revocation to the company's registered agent, or if the company does not appoint and maintain a proper registered agent, to the company's designated office. The notice must state:

- (a) The revocation's effective date, which must be at least sixty (60) days after the date the secretary of state mails the notice; and
- (b) The grounds for revocation under subsection (1) of this section.

(3) The authority of a foreign limited liability company to transact business in this state ceases on the effective date of the notice of revocation unless before that date the company cures each ground for revocation stated in the notice mailed under subsection (2) of this section.

**History.**

I.C., § 30-6-806, as added by 2008, ch. 176, § 1, p. 514.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**OFFICIAL COMMENT**

**Source** — ULPA (2001) § 906, which was based on ULLCA § 1006.

**30-6-807. Cancellation of certificate of authority.** — To cancel its certificate of authority to transact business in this state, a foreign limited liability company must deliver to the secretary of state for filing a notice of cancellation stating the name of the company and that the company desires to cancel its certificate of authority. The certificate is canceled when the notice becomes effective.

**History.**

I.C., § 30-6-807, as added by 2008, ch. 176, § 1, p. 515.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**30-6-808. Effect of failure to have certificate of authority.** — (1) A foreign limited liability company transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.

(2) The failure of a foreign limited liability company to have a certificate of authority to transact business in this state does not impair the validity of a contract or act of the company or prevent the company from defending an action or proceeding in this state.

(3) A member or manager of a foreign limited liability company is not liable for the debts, obligations or other liabilities of the company solely because the company transacted business in this state without a certificate of authority.

**History.**

I.C., § 30-6-808, as added by 2008, ch. 176, § 1, p. 515.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**OFFICIAL COMMENT**

**Source** — ULPA (2001) § 907, which was based on RULPA § 907(d) and ULLCA § 1008.

**30-6-809. Action by attorney general.** — The attorney general may maintain an action to enjoin a foreign limited liability company from transacting business in this state in violation of this part.



**History.**

I.C., § 30-6-809, as added by 2008, ch. 176, § 1, p. 515.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**OFFICIAL COMMENT**

**Source** — ULPA (2001) § 908, which was based on RULPA § 908 and ULLCA § 1009.

**PART 9. ACTIONS BY MEMBERS**

**30-6-901. Direct action by member.** — (1) Subject to subsection (2) of this section, a member may maintain a direct action against another member, a manager or the limited liability company to enforce the member's rights and otherwise protect the member's interests, including rights and interests under the operating agreement or this chapter or arising independently of the membership relationship.

(2) A member maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company.

**History.**

I.C., § 30-6-901, as added by 2008, ch. 176, § 1, p. 515.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53,

Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**Collateral References.** Construction and application of limited liability company acts — Issues relating to derivative actions and actions between members of limited liability company. 48 A.L.R.6th 1.

**OFFICIAL COMMENT**

**Subsection (a) [(1)]** — Source: ULPA (2001) § 1001(a), which was based on RUPA Section 405(b). The subsection has been somewhat re-styled from the ULPA version, and the phrase "for legal or equitable relief" has been deleted as unnecessary. ULPA's reference to "with or without an accounting" has been deleted because the reference: (i) was to the partnership remedy of accounting, which reflected the aggregate nature of a partnership and is inapposite for an *entity* such as an LLC; and (ii) generated some confusion with the equitable claim for an accounting (in the nature of a constructive trust). The "entity-analog" to the partnership-as-aggregate notion of an accounting is the distinction between a direct and derivative claim.

The last phrase of this subsection ("or arising independently ...") comes from RUPA § 405(b)(3), does not create any new rights, obligations, or remedies, and is included merely to emphasize that a person's member-

ship in an LLC does not preclude the person from enforcing rights existing "independently or the membership relationship."

**Subsection (b) [(2)]** — Source: ULPA (2001) § 1001(b). The Comment to that subsection explains:

In ordinary contractual situations it is axiomatic that each party to a contract has standing to sue for breach of that contract. Within a limited partnership, however, different circumstances may exist. A partner does not have a direct claim against another partner merely because the other partner has breached the operating agreement. Likewise a partner's violation of this Act does not automatically create a direct claim for every other partner. To have standing in his, her, or its own right, a partner plaintiff must be able to show a harm that occurs independently of the harm caused or threatened to be caused to the limited partnership.

**30-6-902. Derivative action.** — A member may maintain a derivative action to enforce a right of a limited liability company if:

(1) The member first makes a demand on the other members in a member-managed limited liability company, or the managers of a manager-managed limited liability company, requesting that they cause the company to bring an action to enforce the right, and the managers or other members do not bring the action within a reasonable time; or

(2) A demand under subsection (1) of this section would be futile.

**History.**

I.C., § 30-6-902, as added by 2008, ch. 176, § 1, p. 515.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53,

Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**Collateral References.** Construction and application of limited liability company acts — Issues relating to derivative actions and actions between members of limited liability company. 48 A.L.R.6th 1.

**OFFICIAL COMMENT**

**Source** — ULPA (2001) § 1002, which was a re-styled version RULPA § 1001.

**30-6-903. Proper plaintiff.** — (1) Except as otherwise provided in subsection (2) of this section, a derivative action under section 30-6-902, Idaho Code, may be maintained only by a person that is a member at the time the action is commenced and remains a member while the action continues.

(2) If the sole plaintiff in a derivative action dies while the action is pending, the court may permit another member of the limited liability company to be substituted as plaintiff.

**History.**

I.C., § 30-6-903, as added by 2008, ch. 176, § 1, p. 516.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**OFFICIAL COMMENT**

This section abandons the traditional “contemporaneous ownership” rule, on the theory that the protections of that rule are unnecessary given the closely-held nature of most limited liability companies and the built-in, statutory restrictions on persons becoming members.

**Subsection (b) [(2)]** — This subsection will be inapposite if the limited liability company has only two members, one of whom is

the derivative plaintiff. In that limited circumstance, the plaintiff's death would cause the derivative action to abate. The “pick your partner” principal enshrined in Section 502 [§ 30-6-502] would prevent the decedent's heirs from succeeding to plaintiff status in the derivative action. This Act does not take a position on whether the death of member abates a direct claim against the LLC or a fellow member.

**30-6-904. Pleading.** — In a derivative action under section 30-6-902, Idaho Code, the complaint must state with particularity:

(1) The date and content of plaintiff's demand and the response to the demand by the managers or other members; or

(2) If a demand has not been made, the reasons a demand under section 30-6-902(1), Idaho Code, would be futile.

**History.**

I.C., § 30-6-904, as added by 2008, ch. 176, § 1, p. 516.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**OFFICIAL COMMENT**

**Source** — ULPA (2001) § 1004, which was a re-styled version RULPA § 1003.

**30-6-905. Special litigation committee.** — (1) If a limited liability company is named as or made a party in a derivative proceeding, the company may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the company. If the company appoints a special litigation committee, on motion by the committee made in the name of the company, except for good cause shown, the district court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from enforcing a person's right to information under section 30-6-410, Idaho Code, or, for good cause shown, granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

(2) A special litigation committee may be composed of one (1) or more disinterested and independent individuals, who may be members.

(3) A special litigation committee may be appointed:

(a) In a member-managed limited liability company:

(i) By the consent of a majority of the members not named as defendants or plaintiffs in the proceeding; and

(ii) If all members are named as defendants or plaintiffs in the proceeding, by a majority of the members named as defendants; or

(b) In a manager-managed limited liability company:

(i) By a majority of the managers not named as defendants or plaintiffs in the proceeding; and

(ii) If all managers are named as defendants or plaintiffs in the proceeding, by a majority of the managers named as defendants.

(4) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company that the proceeding:

(a) Continue under the control of the plaintiff;

(b) Continue under the control of the committee;

(c) Be settled on terms approved by the committee; or

(d) Be dismissed.

(5) After making a determination under subsection (4) of this section, a special litigation committee shall file with the court a statement of its determination and its report supporting its determination, giving notice to the plaintiff. The district court shall determine whether the members of the



committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the district court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the district court shall enforce the determination of the committee. Otherwise, the district court shall dissolve the stay of discovery entered under subsection (1) of this section and allow the action to proceed under the direction of the plaintiff.

#### History.

I.C., § 30-6-905, as added by 2008, ch. 176, § 1, p. 516.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

### OFFICIAL COMMENT

Although special litigation committees are best known in the corporate field, they are no more inherently corporate than derivative litigation or the notion that an organization is a person distinct from its owners. An "SLC" can serve as an ADR mechanism, help protect an agreed upon arrangement from strike suits, protect the interests of members who are neither plaintiffs nor defendants (if any), and bring to any judicial decision the benefits of a specially tailored business judgment.

This section's approach corresponds to established law in most jurisdictions, modified to fit the typical governance structures of a limited liability company.

**Subsection (a) [(1)]** — On the availability of Section 410 remedies pending the SLC's investigation, compare *Kaufman v. Computer Assoc. Int'l., Inc.*, C.A. No. 699-N, 2005 WL 3470589 at \*1 (Del. Ch. Dec. 21, 2005, as revised) (presenting "the question of whether to stay a books and records action under 8 Del. C. § 220 at the request of a special litigation committee when a derivative action encompassing substantially the same allegations of wrongdoing filed by different plaintiffs is pending in another jurisdiction;" concluding "[f]or reasons that have much to do with the light burden imposed by the plaintiff's demand in this case ... that the special litigation committee's motion to stay the books and records action should be denied")

**Subsection (d) [(4)]** — The standard stated for judicial review of the SLC determi-

nation follows *Auerbach v. Bennett*, 47 N.Y.2d 619, 419 N.Y.S.2d 920 (N.Y. 1979) rather than *Zapata Corp. v. Maldonado*, 430 A.2d 779 (Del. 1981), because the latter's reference to a court's business judgment has generally not been followed in other states.

*Houle v. Low*, 407 Mass. 810, 822, 556 N.E.2d 51, 58 (Mass. 1990) contains an excellent explanation of the court's role in reviewing an SLC decision:

The value of a special litigation committee is coextensive with the extent to which that committee truly exercises business judgment. In order to ensure that special litigation committees do act for the [entity]'s best interest, a good deal of judicial oversight is necessary in each case. At the same time, however, courts must be careful not to usurp the committee's valuable role in exercising business judgment.... [A] special litigation committee must be independent, unbiased, and act in good faith. Moreover, such a committee must conduct a thorough and careful analysis regarding the plaintiff's derivative suit, .... The burden of proving that these procedural requirements have been met must rest, in all fairness, on the party capable of making that proof — the [entity].

For a discussion of how a court should approach the question of independence, see *Einhorn v. Culea*, 612 N.W.2d 78, 91 (Wis. 2000).

**30-6-906. Proceeds and expenses.** — (1) Except as otherwise provided in subsection (2) of this section:

(a) Any proceeds or other benefits of a derivative action under section 30-6-902, Idaho Code, whether by judgment, compromise or settlement, belong to the limited liability company and not to the plaintiff; and

(b) If the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the company.

(2) If a derivative action under section 30-6-902, Idaho Code, is successful in whole or in part, the district court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the limited liability company.

**History.**

I.C., § 30-6-906, as added by 2008, ch. 176, § 1, p. 517.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**OFFICIAL COMMENT**

**Source** — ULPA (2001) § 1005, which was a re-styled version RULPA § 1004.

**PART 10. MERGER, INTEREST EXCHANGE, CONVERSION AND DOMESTICATION**

**30-6-1001. Applicability of Idaho entity transactions act. —**

(1) Unless the limited liability company is excluded therefrom by section 30-18-110, Idaho Code, and except as provided in subsection (2) of this section, a merger, interest exchange, conversion or domestication, in which a limited liability company is a party is governed by the Idaho entity transactions act, chapter 18, title 30, Idaho Code.

(2) Section 30-6-1002, Idaho Code, applies to transactions in which a limited liability company is a party under the Idaho entity transactions act, chapter 18, title 30, Idaho Code.

**History.**

I.C., § 30-6-1001, as added by 2008, ch. 176, § 1, p. 517.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**IDAHO REPORTER'S COMMENT**

The Idaho Entity Transactions Act governs a merger, interest exchange, conversion, or domestication in which a limited liability company is a party. As a result, nearly all of Part 10 of RULLCA was removed from the Idaho Act and replaced with a cross reference to the Idaho Entity Transactions Act.

**30-6-1002. Restrictions on approval of mergers, interest exchanges, conversions and domestications. —** (1) If a member of a constituent, converting or domesticating limited liability company will have personal liability with respect to a surviving, converted or domesticated organization, approval or amendment of a plan of merger, interest exchange, conversion or domestication is ineffective without the consent of the member, unless:

(a) The company's operating agreement provides for approval of a merger, interest exchange, conversion or domestication with the consent of fewer than all the members; and

(b) The member has consented to the provision of the operating agreement.

(2) A member does not give the consent required by subsection (1) of this section merely by consenting to a provision of the operating agreement that permits the operating agreement to be amended with the consent of fewer than all the members.

**History.**

I.C., § 30-6-1002, as added by 2008, ch. 176, § 1, p. 517.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**IDAHO REPORTER'S COMMENT**

This section of the Idaho Act corresponds to RULLCA Section 1014.

**PART 11. MISCELLANEOUS PROVISIONS**

**30-6-1101. Uniformity of application and construction.** — In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**History.**

I.C., § 30-6-1101, as added by 2008, ch. 176, § 1, p. 518.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**30-6-1102. Relation to electronic signatures in global and national commerce act.** — To the extent this chapter modifies, limits and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. section 7001 et seq., this chapter does not modify, limit or supersede section 101(c) of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b).

**History.**

I.C., § 30-6-1102, as added by 2008, ch. 176, § 1, p. 518.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.

**30-6-1103. Savings clause.** — This chapter does not affect an action commenced, proceeding brought, or right accrued before this chapter takes effect.

**History.**

I.C., § 30-6-1103, as added by 2008, ch. 176, § 1, p. 518.

**Compiler's Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010. See § 30-6-1104.



**30-6-1104. Application to existing relationships.** — (1) Before July 1, 2010, this chapter governs only:

- (a) A limited liability company formed on or after July 1, 2008; and
- (b) Except as otherwise provided in subsection (3) of this section, a limited liability company formed before July 1, 2008, which elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to this chapter.

(2) Except as otherwise provided in subsection (3) of this section, on and after July 1, 2010, this chapter governs all limited liability companies.

(3) For the purposes of applying this chapter to a limited liability company formed before July 1, 2008:

- (a) The company’s articles of organization are deemed to be the company’s certificate of organization; and
- (b) For the purposes of applying section 30-6-102(10), Idaho Code, and subject to section 30-6-112(4), Idaho Code, language in the company’s articles of organization designating the company’s management structure operates as if that language were in the operating agreement.

**History.**  
I.C., § 30-6-1104, as added by 2008, ch. 176, § 1, p. 518.

**Compiler’s Notes.** Section 6 of S.L. 2008, ch. 176 provided that the enactment of this

section should take effect on and after July 1, 2008 and that the repeal of the former Idaho Limited Liability Act, chapter 6, title 53, Idaho Code, should take effect on or after July 1, 2010.

OFFICIAL COMMENT

**Subsection (c) [(3)]** — When a pre-existing limited liability company becomes subject to this Act, the company ceases to be governed

by the predecessor act, including whatever requirements that act might have imposed for the contents of the articles of organization.

IDAHO REPORTER’S COMMENT

Until July 1, 2010, the predecessor Idaho Limited Liability Company Act (Idaho Code Sections 53-601 *et seq.*) governs all limited liability companies formed prior to July 1, 2008, that do not elect to be subject to this Idaho Act in the interim.

CHAPTER 9

IDAHO ESCROW ACT

SECTION.	SECTION.
30-907. Director’s issuance or denial of license.	count — Interest on escrow accounts.
30-914. Accounts to be maintained — Records open to inspection — Retention of records — Trust ac-	30-920. Remedies.
	30-935. Initial licensing and compliance. [Repealed.]

**30-907. Director’s issuance or denial of license.** — (1) The director shall receive and act upon all applications for licenses to engage in business as an escrow agency under this chapter. If the director finds that all requirements of statute and rule have been met and all applicable fees paid, and the applicant is not otherwise unqualified for licensure, the director shall issue a license to the applicant.

(2) An application for a license as an escrow agency shall be in writing

and filed with the director in such form as is prescribed by the director, shall include such information as the director may reasonably require, and shall be verified on oath by the applicant. Such information shall be updated and filed with the director as necessary to keep the information current. The application for licensure shall be accompanied by an application fee of three hundred fifty dollars (\$350). When an application for licensure is denied or withdrawn, the director shall retain all fees paid by the applicant.

(3) An application for an escrow agency license under this chapter may be denied if the director finds that:

(a) The escrow agency's business was or will be formed for any business other than legitimate escrow services, or proposes to use a name that is misleading or in conflict with the name of an existing licensee;

(b) Any incorporator, officer, director, member, general partner, employee or agent of the escrow agency applicant has been:

(i) Convicted of, or received a withheld judgment for, any felony; or

(ii) Convicted of, or received a withheld judgment for, a misdemeanor involving dishonesty or moral turpitude; or

(iii) Committed any crime or act involving dishonesty, fraud or deceit, which crime or act is substantially related to the qualifications, functions or duties of a person engaged in an escrow business;

(c) There is no natural person possessing a minimum of three (3) years of supervisory experience in relation to an escrow business supervising each escrow agency office;

(d) The applicant or any officer, director, member, general partner, employee or agent of the applicant has demonstrated lack of fitness to transact escrow business;

(e) The applicant has made any false statement of a material fact in the application for a license; or

(f) The applicant, any officer, director, member, general partner or any person owning or controlling, directly or indirectly, ten percent (10%) or more of the outstanding equity securities of the applicant has violated any provision of this chapter or rules promulgated thereunder, or any similar regulatory scheme in this state or in any foreign jurisdiction.

**History.**

I.C., § 30-907, as added by 2005, ch. 236, § 2, p. 717; am. 2008, ch. 311, § 1, p. 858.

**Compiler's Notes.** The 2008 amendment, by ch. 311, in paragraph (3)(b)(i), deleted "or a

misdemeanor involving dishonesty or moral turpitude" from the end; added paragraph (3)(b)(ii) and redesignated former paragraph (3)(b)(ii) as paragraph (3)(b)(iii).

**30-914. Accounts to be maintained — Records open to inspection — Retention of records — Trust account — Interest on escrow accounts.** — (1) Each licensee shall maintain sufficient books, accounts and records readily accessible to the department for the department to determine at any time the licensee's financial condition, what duties and responsibilities the licensee has undertaken to perform and whether it is properly performing all such duties, and any other information considered necessary by the director to determine whether the licensee is operating in a safe, competent and lawful manner. The books, records and accounts shall

be maintained in accordance with generally accepted accounting principles and sound business practice.

(2) For each individual escrow account, the licensee shall maintain the escrow agreement and all amendments, all instructions affecting the agreement, all related correspondence, and an individual ledger reflecting all activity pertinent to that account.

(3) Each licensee shall continuously maintain the following general accounts:

(a) A general ledger reflecting assets, liabilities, income, expenses and equity accounts;

(b) An escrow liability control ledger for all escrow accounts;

(c) A cash receipts and disbursements journal; and

(d) Copies of all receipts and disbursements used as a medium of posting to individual escrow accounts.

(4)(a) Every licensee shall keep a separate escrow trust fund account established at a financial institution approved by the director, in which shall be kept separate, distinct and apart and segregated from the licensee's own funds, all funds or moneys of clients which are being held in trust by the licensee pending the closing of an escrow transaction or the full performance of the escrow agreement. All trust funds shall be deposited not later than the first banking day following receipt thereof. Such funds, when deposited, shall be designated as "escrow accounts" or given some other appropriate designation indicating that the funds are not the funds of the licensee.

(b) Every licensee shall maintain all other assets or property received pursuant to an escrow in accordance with a written escrow agreement in a manner which will reasonably preserve and protect the property from loss, theft or damage, and which will otherwise comply with all duties and responsibilities of a fiduciary or bailee generally.

(5) The records referenced in this section shall be reconciled at least monthly.

(6) All records referenced in this section shall be maintained by the licensee for seven (7) years following the close of each account.

(7) Any interest received on funds deposited with an escrow agency in connection with an escrow must be paid over to the depositing party to the escrow and may not be transferred to an account of the escrow agency. This section shall not limit the right of the escrow agency to contract with the depositing party with respect to the interest received on the deposits by independent agreement.

**History.**

I.C., § 30-914, as added by 2005, ch. 236, § 2, p. 717; am. 2008, ch. 311, § 2, p. 859.

**Compiler's Notes.** The 2008 amendment,

by ch. 311, substituted "financial institution approved by the director" for "financial institution located in Idaho" in the first sentence in paragraph (4)(a).

**30-920. Remedies.** — (1) Whenever it appears to the director that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order



thereunder, is conducting its business in an unsafe and injurious manner, or that its capital or assets are impaired, the director may in his discretion:

- (a) Order the person to cease and desist from the violation of any provision of this chapter, rule or order thereunder;
  - (b) Issue an order revoking or suspending the licensee's escrow agency license;
  - (c) After notice and the opportunity for a hearing, except as otherwise provided in this chapter, issue an order imposing a civil penalty not to exceed five thousand dollars (\$5,000) for each violation of this chapter or any rule or order thereunder;
  - (d) After notice and the opportunity for a hearing, issue an order of restitution to any person for loss of money or property resulting from a violation of this chapter; and
  - (e) Issue an order, pursuant to section 67-5247, Idaho Code, impounding the accounts, including all operating and trust accounts, of any licensee or person required to be licensed under this chapter.
- (2) In addition to such remedies, the director may bring an action in the fourth district court in and for Ada county or in such other court as the director deems appropriate. Upon a proper showing, the court may:
- (a) Issue a permanent or temporary injunction, restraining order, or declaratory judgment;
  - (b) Order other appropriate or ancillary relief, which may include:
    - (i) An asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the director, for the defendant or the defendant's assets;
    - (ii) Ordering the director to take charge and control of a defendant's property, including investment accounts and accounts in a financial institution, rents and profits; to collect debts; and to acquire and dispose of property;
  - (c) Issue an order of restitution to any person for loss of money or property resulting from a violation of this chapter; and
  - (d) Except as otherwise provided by this chapter, impose a civil penalty not to exceed five thousand dollars (\$5,000) for each violation.
- (3) The court may not require the director to post a bond.

#### **History.**

I.C., § 30-920, as added by 2005, ch. 236, § 2, p. 717; am. 2008, ch. 311, § 3, p. 860.

**Compiler's Notes.** The 2008 amendment, by ch. 311, added paragraphs (1)(d) and (1)(e); rewrote paragraph (2)(a), which formerly read: "Grant a temporary restraining order, followed by a preliminary injunction and a

permanent injunction for the department or receiver to exercise control of, operate or liquidate an escrow agency's business in this state, or such other injunctive relief as appropriate; and"; and added paragraphs (2)(b) and (2)(c), and redesignated former paragraph (2)(b) as paragraph (2)(d).

### **30-935. Initial licensing and compliance. [Repealed.]**

**Compiler's Notes.** This section, which comprised I.C., § 30-935, as added by 2005,

ch. 236, § 2, p. 717, was repealed by S.L. 2008, ch. 311, § 4.

CHAPTER 13

PROFESSIONAL SERVICE CORPORATIONS

SECTION.

30-1309A. Death or disqualification of sole shareholder.

SECTION.

30-1312. Application of corporation laws — Merger.

30-1304. Who may incorporate.

Cited in: Stephen v. Sallaz & Gatewood, Chtd., 150 Idaho 521, 248 P.3d 1256 (2011).

30-1306. Professional relationship unaffected — Personal and corporate liability.

Cited in: Stephen v. Sallaz & Gatewood, Chtd., 150 Idaho 521, 248 P.3d 1256 (2011).

**30-1309A. Death or disqualification of sole shareholder.** — If a corporation organized under this chapter has only one (1) shareholder, and that shareholder becomes disqualified under section 30-1309, Idaho Code, or dies, the disqualified shareholder or the personal representative of the deceased shareholder may, notwithstanding other provisions of this chapter, exercise the voting rights of the outstanding shares only for the purpose of dissolving the corporation pursuant to sections 30-1-1401 through 30-1-1440, Idaho Code, consolidating or merging the corporation pursuant to section 30-1312, Idaho Code, or converting the corporation to a corporation for profit under the Idaho entity transactions act, chapter 18, title 30, Idaho Code, or, if excluded by said act pursuant to section 30-18-110, Idaho Code, under the Idaho business corporation act, chapter 1, title 30, Idaho Code.

History.

I.C., § 30-1309A, as added by 1979, ch. 108, § 4, p. 343; am. 1987, ch. 191, § 1, p. 389; am. 2003, ch. 62, § 1, p. 209; am. 2007, ch. 116, § 6, p. 333.

**Compiler's Notes.** The 2007 amendment, by ch. 116, inserted "under the Idaho entity

transactions act, chapter 18, title 30, Idaho Code, or, if excluded by said act pursuant to section 30-18-110, Idaho Code" near the end.

Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

**30-1312. Application of corporation laws — Merger.** — (1) Subsection (2) of this section applies only to mergers of professional corporations excluded from the Idaho entity transactions act by section 30-18-110, Idaho Code.

(2) The business corporation act of the state of Idaho shall be applicable to a corporation organized pursuant to this act except to the extent that any of the provisions of this act are interpreted to be in conflict with the provisions thereof, and in such event the provisions of this act shall take precedence with respect to a corporation organized pursuant to the provisions of this act. A professional corporation organized under this act shall consolidate or merge only with another professional corporation organized to render the same specific professional service or allied professional services.

**History.**

1963, ch. 282, § 12, p. 725; am. 1979, ch. 108, § 5, p. 343; am. 2007, ch. 116, § 7, p. 333.

**Compiler's Notes.** The 2007 amendment, by ch. 116, added subsection (1) and design-

nated the existing provisions of the section as subsection (2).

Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

## CHAPTER 14

## UNIFORM SECURITIES ACT (2004)

## PART 1. GENERAL PROVISIONS

## SECTION.

## 30-14-102. Definitions.

PART 2. EXEMPTIONS FROM REGISTRATION OF  
SECURITIES

## 30-14-202. Exempt transactions.

PART 3. REGISTRATION OF SECURITIES AND NOTICE  
FILING OF FEDERAL COVERED SECURITIES

## 30-14-302. Notice filing.

PART 4. BROKER-DEALERS, AGENTS, INVESTMENT  
ADVISERS, INVESTMENT ADVISER REPRESENTATIVES,  
AND FEDERAL COVERED INVESTMENT ADVISERS30-14-402. Agent registration requirement  
and exemptions.

## SECTION.

30-14-412. Denial, revocation, suspension, withdrawal, restriction, condition or limitation of registration.

## PART 5. FRAUD AND LIABILITIES

## 30-14-501. General fraud.

30-14-502. Prohibited conduct in providing investment advice.

## PART 6. ADMINISTRATION AND JUDICIAL REVIEW

## 30-14-603. Civil enforcement.

30-14-611. Service of process.

## PART 1. GENERAL PROVISIONS

**30-14-101. Short title.****Attorney's Fees.**

In investors' action against their brokers for securities violations where they received an arbitration award, the trial court correctly ruled the investors were not entitled to pursue

fees in the award confirmation proceedings, as there was no independent cause of action for attorney's fees. *Barbee v. WMA Securities, Inc.*, 143 Idaho 391, 146 P.3d 657 (2006).

**30-14-102. Definitions.** — In this chapter, unless the context otherwise requires:

(1) "Administrator" means the director of the Idaho department of finance or his designee.

(2) "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or who represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. A partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions, is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by a rule adopted or an order issued under this chapter.

(3) "Bank" means:

(a) A banking institution organized under the laws of the United States;

(b) A member bank of the federal reserve system;

(c) Any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising



fiduciary powers similar to those permitted to be exercised by national banks under the authority of the comptroller of the currency pursuant to section 1 of public law 87-722 (12 U.S.C. 92a), and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this chapter; and

(d) A receiver, conservator, or other liquidating agent of any institution or firm included in subparagraph (a), (b) or (c) of this subsection.

(4) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include:

(a) An agent;

(b) An issuer;

(c) A bank, a trust company organized or chartered under the laws of this state, or a savings institution if its activities as a broker-dealer are limited to those specified in subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if limited to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the securities exchange act of 1934 (15 U.S.C. 78c(a)(4) and (5)) or a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the securities exchange act of 1934 (15 U.S.C. 78c(a)(4));

(d) An international banking institution; or

(e) A person excluded by a rule adopted or an order issued under this chapter.

(5) "Depository institution" means:

(a) A bank; or

(b) A savings institution, trust company, credit union or similar institution that is organized or chartered under the laws of a state or of the United States that is authorized to receive deposits, and that is supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund, or a successor authorized by federal law. The term does not include:

(i) An insurance company or other organization primarily engaged in the business of insurance;

(ii) A morris plan bank; or

(iii) An industrial loan company.

(6) "Federal covered investment adviser" means a person registered under the investment advisers act of 1940, as cited in section 30-14-103, Idaho Code.

(7) "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under section 18(b) of the securities act of 1933 (15 U.S.C. 77r(b)) or rules or regulations adopted pursuant to that provision.

(8) "Filing" means the receipt under this chapter of a record by the administrator or a designee of the administrator.

(9) "Fraud," "deceit," and "defraud" are not limited to common law deceit.

(10) "Guaranteed" means guaranteed as to payment of all principal and all interest.

(11) “Institutional investor” means any of the following, whether acting for itself or for others in a fiduciary capacity:

- (a) A depository institution, a trust company organized or chartered under the laws of this state, or an international banking institution;
- (b) An insurance company;
- (c) A separate account of an insurance company;
- (d) An investment company as defined in the investment company act of 1940, as cited in section 30-14-103, Idaho Code;
- (e) A broker-dealer registered under the securities exchange act of 1934, as cited in section 30-14-103, Idaho Code;
- (f) An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of ten million dollars (\$10,000,000) or its investment decisions are made by a named fiduciary, as defined in the employee retirement income security act of 1974, that is a broker-dealer registered under the securities exchange act of 1934, an investment adviser registered or exempt from registration under the investment advisers act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company;
- (g) A plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of ten million dollars (\$10,000,000) or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the employee retirement income security act of 1974, that is a broker-dealer registered under the securities exchange act of 1934, an investment adviser registered or exempt from registration under the investment advisers act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company;
- (h) A trust, if it has total assets in excess of ten million dollars (\$10,000,000), its trustee is a depository institution, and its participants are exclusively plans of the types identified in paragraph (f) or (g) of this subsection, regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;
- (i) An organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)), a corporation, a Massachusetts trust or similar business trust, a limited liability company, or a partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of ten million dollars (\$10,000,000);
- (j) A small business investment company licensed by the small business administration under section 301(c) of the small business investment act of 1958 (15 U.S.C. 681(c)) with total assets in excess of ten million dollars (\$10,000,000);
- (k) A private business development company as defined in section 202(a)(22) of the investment advisers act of 1940 (15 U.S.C. 80b-2(a)(22)) with total assets in excess of ten million dollars (\$10,000,000);
- (l) A federal covered investment adviser acting for its own account;

(m) A “qualified institutional buyer” as defined in rule 144A(a)(1), other than rule 144A(a)(1)(i)(H), adopted under the securities act of 1933 (17 CFR 230.144A);

(n) A “major U.S. institutional investor” as defined in rule 15a-6(b)(4)(i) adopted under the securities exchange act of 1934 (17 CFR 240.15a-6);

(o) Any other person, other than an individual, of institutional character with total assets in excess of ten million dollars (\$10,000,000) not organized for the specific purpose of evading this chapter; or

(p) Any other person specified by a rule adopted or an order issued under this chapter.

(12) “Insurance company” means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state.

(13) “Insured” means insured as to payment of all principal and all interest.

(14) “International banking institution” means an international financial institution of which the United States is a member and whose securities are exempt from registration under the securities act of 1933.

(15) “Investment adviser” means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include:

(a) An investment adviser representative;

(b) A lawyer, accountant, engineer or teacher whose performance of investment advice is solely incidental to the practice of the person’s profession;

(c) A broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;

(d) A publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;

(e) A federal covered investment adviser;

(f) A bank, a trust company organized or chartered under the laws of this state, or a savings institution;

(g) Any other person that is excluded by the investment advisers act of 1940 from the definition of investment adviser;

(h) Any person who offers accountancy services to the public and who holds a valid, unrevoked and unsuspended license under the provisions of chapter 2, title 54, Idaho Code, designating said person as a certified public accountant or a licensed public accountant; or

(i) Any other person excluded by a rule adopted or an order issued under this chapter.



(16) "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who:

- (a) Performs only clerical or ministerial acts;
- (b) Is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;
- (c) Is employed by or associated with a federal covered investment adviser, unless the individual has a "place of business" in this state as that term is defined by rule adopted under section 203A of the investment advisers act of 1940 (15 U.S.C. 80b-3a) and is:
  - (i) An "investment adviser representative" as that term is defined by rule adopted under section 203A of the investment advisers act of 1940 (15 U.S.C. 80b-3a); or
  - (ii) Not a "supervised person" as that term is defined in section 202(a)(25) of the investment advisers act of 1940 (15 U.S.C. 80b-2(a)(25)); or
- (d) Is excluded by a rule adopted or an order issued under this chapter.

(17) "Issuer" means a person that issues or proposes to issue a security, subject to the following:

- (a) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued.
- (b) The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.
- (c) The issuer of a fractional undivided interest in an oil, gas or other mineral lease or in payments out of production under a lease, right or royalty is the owner of an interest in the lease or in payments out of production under a lease, right or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

(18) "Nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer.

(19) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to section 14(d) of the securities exchange act of 1934 (15 U.S.C. 78n(d)).

(20) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(21) "Place of business" of a broker-dealer, an investment adviser, or a federal covered investment adviser means:

(a) An office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients; or

(b) Any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

(22) "Predecessor act" means the act repealed by section 30-14-702, Idaho Code.

(23) "Price amendment" means the amendment to a registration statement filed under the securities act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the securities act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(24) "Principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners or managers of the broker-dealer or investment adviser direct, control and coordinate the activities of the broker-dealer or investment adviser.

(25) "Record," except in the phrases "of record," "official record," and "public record," means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) "Sale" includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value. "Offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both "sale" and "offer to sell" include:

(a) A security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value;

(b) A gift of assessable stock involving an offer and sale; and

(c) A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

(27) "Securities and exchange commission" means the United States securities and exchange commission.

(28) "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation

in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas or other mineral rights; put, call, straddle, option or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a “security”; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. “Security”:

- (a) Includes both a certificated and an uncertificated security;
- (b) Does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or other specified period;
- (c) Does not include an interest in a contributory or noncontributory pension or welfare plan subject to the employee retirement income security act of 1974;
- (d) Includes as an “investment contract” an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor. “Common enterprise” means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors; and
- (e) Includes as an “investment contract,” among other contracts, an interest in a limited partnership and a limited liability company and an investment in a viatical settlement, life settlement or senior settlement or similar agreement.

(29) “Self-regulatory organization” means a national securities exchange registered under the securities exchange act of 1934, a national securities association of broker-dealers registered under the securities exchange act of 1934, a clearing agency registered under the securities exchange act of 1934, or the municipal securities rulemaking board established under the securities exchange act of 1934.

(30) “Sign” means, with present intent to authenticate or adopt a record:

- (a) To execute or adopt a tangible symbol; or
- (b) To attach or logically associate with the record an electronic symbol, sound or process.

(31) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

#### **History.**

I.C., § 30-14-102, as added by 2004, ch. 45, § 2, p. 169; am. 2012, ch. 65, § 1, p. 171.

**Compiler’s Notes.** The references, in subsection (4)(c), to “subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi)” and “3(a)(5)(B)” and “3(a)(5)(C)” are all to 15

U.S.C.S. § 78c (a)(4) and (a)(5) in the securities exchange act of 1934. which section was enacted by § 3 of chapter 404 of an act of June 6, 1934.

The investment advisers act of 1940, referred to in subsection (16), is codified as 15 USCS § 80b-1 et seq.



The investment company act of 1940, referred to in this section, is codified as 15 USCS § 80a-1 et seq.

The securities exchange act of 1934, referred to in this section, is codified as 15 USCS § 78a et seq.

The employee retirement income security act of 1974, referred to in this section, is codified as 29 USCS § 1001 et seq.

The securities act of 1933, referred to in this section, is codified as 15 USCS § 77a et seq.

The 2012 amendment, by ch. 65, substituted “subsections (3)(a)(4)(B)(i) through (iv)” for “subsections (3)(a)((4)(b)(i) through (iv)” in paragraph (4)(c).

## PART 2. EXEMPTIONS FROM REGISTRATION OF SECURITIES

**30-14-202. Exempt transactions.** — The following transactions are exempt from the requirements of sections 30-14-301 through 30-14-306, Idaho Code, and section 30-14-504, Idaho Code:

(1) An isolated nonissuer transaction, whether or not effected by or through a broker-dealer;

(2) A nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this chapter, and a resale transaction by a sponsor of a unit investment trust registered under the investment company act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety (90) days, if, at the date of the transaction:

(a) The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(b) The security is sold at a price reasonably related to its current market price;

(c) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;

(d) A nationally recognized securities manual or its electronic equivalent designated by any rule adopted or an order issued under this chapter or a record filed with the securities and exchange commission that is publicly available and contains:

(i) A description of the business and operations of the issuer;

(ii) The names of the issuer’s executive officers and the names of the issuer’s directors, if any;

(iii) An audited balance sheet of the issuer as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and

(iv) An audited income statement for each of the issuer’s two (2) immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and

- (e) Any one (1) of the following requirements is met:
- (i) The issuer of the security has a class of equity securities listed on a national securities exchange registered under section 6 of the securities exchange act of 1934 or designated for trading on the national association of securities dealers automated quotation system;
  - (ii) The issuer of the security is a unit investment trust registered under the investment company act of 1940;
  - (iii) The issuer of the security, including its predecessors, has been engaged in continuous business for at least three (3) years; or
  - (iv) The issuer of the security has total assets of at least two million dollars (\$2,000,000) based on an audited balance sheet as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization;
- (3) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the board of governors of the federal reserve system;
- (4) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in an outstanding security if the guarantor of the security files reports with the securities and exchange commission under the reporting requirements of section 13 or 15(d) of the securities exchange act of 1934 (15 U.S.C. 78m or 78o(d));
- (5) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security that:
- (a) Is rated at the time of the transaction by a nationally recognized statistical rating organization in one (1) of its four (4) highest rating categories; or
  - (b) Has a fixed maturity or a fixed interest or dividend, if:
    - (i) A default has not occurred during the current fiscal year or within the three (3) previous fiscal years of the issuer or any predecessor, in the payment of principal, interest, or dividends on the security; and
    - (ii) The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve (12) months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;
- (6) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter effecting an unsolicited order or offer to purchase;
- (7) A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this chapter;
- (8) A nonissuer transaction by a federal covered investment adviser with investments under management in excess of one hundred million dollars (\$100,000,000) acting in the exercise of discretionary authority in a signed record for the account of others;

(9) A transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one (1) or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the administrator after a hearing as provided in section 30-14-202A, Idaho Code, or otherwise;

(10) A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(11) A transaction in a note, bond, debenture or other evidence of indebtedness secured by a mortgage or other security agreement if the note, bond, debenture or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;

(12) A transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator;

(13) A sale or offer to sell to:

(a) An institutional investor;

(b) A federal covered investment adviser; or

(c) Any other person exempted by a rule adopted or an order issued under this chapter;

(14) A sale or an offer to sell securities of an issuer, if the transaction is part of a single issue in which:

(a) Not more than ten (10) purchasers are present in this state during any twelve (12) consecutive months, other than those designated in subsection (13) of this section;

(b) A general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;

(c) A commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this chapter or an agent registered under this chapter for soliciting a prospective purchaser in this state; and

(d) The issuer reasonably believes that all the purchasers in this state, other than those designated in subsection (13) of this section, are purchasing for investment;

(15) A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state;

(16) An offer to sell, but not a sale, of a security not exempt from registration under the securities act of 1933 if:

(a) A registration or offering statement or similar record as required under the securities act of 1933 has been filed, but is not effective, or the offer is made in compliance with rule 165 adopted under the securities act of 1933 (17 CFR 230.165); and

(b) A stop order of which the offeror is aware has not been issued against the offeror by the administrator or the securities and exchange commission, and an audit, inspection or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;



(17) An offer to sell, but not a sale, of a security exempt from registration under the securities act of 1933 if:

(a) A registration statement has been filed under this chapter, but is not effective;

(b) A solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the administrator under this chapter; and

(c) A stop order of which the offeror is aware has not been issued by the administrator under this chapter and an audit, inspection or proceeding that may culminate in a stop order is not known by the offeror to be pending;

(18) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties;

(19) A rescission offer, sale or purchase under section 30-14-510, Idaho Code;

(20) An offer or sale of a security to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this chapter;

(21) Employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:

(a) Directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisers;

(b) Family members who acquire such securities from those persons through gifts or domestic relations orders;

(c) Former employees, directors, general partners, trustees, officers, consultants and advisers if those individuals were employed by or providing services to the issuer when the securities were offered; and

(d) Insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent (50%) of their annual income from those organizations;

(22) A transaction involving:

(a) A stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property or stock;

(b) An act incident to a judicially approved reorganization in which a security is issued in exchange for one (1) or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or

(c) The solicitation of tenders of securities by an offeror in a tender offer in compliance with rule 162 adopted under the securities act of 1933 (17 CFR 230.162); or

(23) A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by this subsection or by a rule adopted or an order issued under this chapter; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than one hundred eighty (180) days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this subsection or by a rule adopted or an order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this subsection, Canada, together with its provinces and territories, is a designated foreign jurisdiction and the Toronto stock exchange, inc., is a designated securities exchange. After an administrative hearing in compliance with chapter 52, title 67, Idaho Code, the administrator, by rule adopted or an order issued under this chapter, may revoke the designation of a securities exchange under this subsection, if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

#### History.

I.C., § 30-14-202, as added by 2004, ch. 45, § 2, p. 169; am. 2008, ch. 143, § 1, p. 415; am. 2012, ch. 65, § 2, p. 171.

**Compiler's Notes.** The 2008 amendment, by ch. 143, deleted the paragraph (11)(a) designation and deleted paragraphs (11)(b) and (11)(c), which read: "(b) A general solicitation or general advertisement of the trans-

action is not made; and (c) A commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this chapter as a broker-dealer or as an agent".

The 2012 amendment, by ch. 65, inserted "and" preceding "contains" near the end of the introductory paragraph in (2)(d).

### PART 3. REGISTRATION OF SECURITIES AND NOTICE FILING OF FEDERAL COVERED SECURITIES

**30-14-302. Notice filing.** — (a) Required filing of records. With respect to a federal covered security, as defined in section 18(b)(2) of the securities act of 1933 (15 U.S.C. 77r(b)(2)), that is not otherwise exempt under sections 30-14-201 through 30-14-203, Idaho Code, a rule adopted or an order issued under this chapter may require the filing of any or all of the following records:

(1) Before the initial offer of a federal covered security in this state, all records that are part of a federal registration statement filed with the securities and exchange commission under the securities act of 1933 and a consent to service of process complying with section 30-14-611, Idaho Code, signed by the issuer and the payment of a fee of three hundred

dollars (\$300) for mutual funds and one hundred dollars (\$100) for unit investment trusts;

(2) After the initial offer of the federal covered security in this state, all records that are part of an amendment to a federal registration statement filed with the securities and exchange commission under the securities act of 1933; and

(3) To the extent necessary or appropriate to compute fees, a report of the value of the federal covered securities sold or offered to persons present in this state, if the sales data are not included in records filed with the securities and exchange commission; and

(4) Each series or portfolio of an investment company offering shall be required to make a separate notice filing. Separate notice filings for classes of an investment company are not required so long as classes are used solely as a method of distinguishing payment plans within a series or portfolio.

(b) Notice filing effectiveness and renewal. A notice filing under subsection (a) of this section is effective for one (1) year commencing on the later of the notice filing or the effectiveness of the offering filed with the securities and exchange commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the securities and exchange commission that are required by rule or order under this chapter to be filed and by paying a renewal fee of three hundred dollars (\$300) for mutual funds and one hundred dollars (\$100) for unit investment trusts. A previously filed consent to service of process complying with section 30-14-611, Idaho Code, may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

(c) Notice filings for federal covered securities under section 18(b)(4)(D). With respect to a security that is a federal covered security under section 18(b)(4)(D) of the securities act of 1933 (15 U.S.C. 77r(b)(4)(D)), a rule or order under this chapter may require a notice filing by or on behalf of an issuer to include a copy of form D and the payment of a fee of fifty dollars (\$50.00).

(d) Stop orders. Except with respect to a federal security under section 18(b)(1) of the securities act of 1933 (15 U.S.C. 77r(b)(1)), if the administrator finds that there is a failure to comply with a notice or fee requirement of this section, the administrator may issue a stop order suspending the offer and sale of a federal covered security in this state. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the administrator.

#### **History.**

I.C., § 30-14-302, as added by 2004, ch. 45, § 2, p. 169; am. 2012, ch. 65, § 3, p. 171.

**Compiler's Notes.** The securities act of 1933, referred to in this section, is codified as 15 USCS § 77a et seq.

The 2012 amendment, by ch. 65, in subsection (c), updated the federal citations near the

beginning and substituted "and the payment of a fee of fifty dollars (\$50.00)" for "including the appendix, as promulgated by the securities and exchange commission, and a consent to service of process complying with section 30-14-611, Idaho Code, signed by the issuer not later than fifteen (15) days after the first sale of the federal covered security in this



state and the payment of a fee of fifty dollars (\$50.00); and the payment of a fee of fifty dollars (\$50.00) for any late filing" at the end.

PART 4. BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS

**30-14-402. Agent registration requirement and exemptions. —**

(a) Registration requirement. It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration as an agent under subsection (b) of this section.

(b) Exemptions from registration. The following individuals are exempt from the registration requirement of subsection (a) of this section:

(1) An individual who represents a broker-dealer in effecting transactions in this state limited to those described in section 15(h)(2) of the securities exchange act of 1934 (15 U.S.C. 78o(h)(2));

(2) An individual who represents a broker-dealer that is exempt under section 30-14-401(b) or (d), Idaho Code;

(3) An individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(4) An individual who represents an issuer and who effects transactions in the issuer's securities exempted by section 30-14-202, Idaho Code, other than section 30-14-202(14), Idaho Code;

(5) An individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, provided however that an individual who effects transactions in a federal covered security under section 18(b)(3) or 18(b)(4)(D) of the securities act of 1933 (15 U.S.C. 77r(b)(3) or 77r(b)(4)(D)) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(6) An individual who represents a broker-dealer registered in this state under section 30-14-401(a), Idaho Code, or exempt from registration under section 30-14-401(b), Idaho Code, in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars (\$100,000,000) acting for the account of others pursuant to discretionary authority in a signed record;

(7) An individual who represents an issuer in connection with the purchase of the issuer's own securities;

(8) An individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; or

(9) Any other individual exempted by a rule adopted or an order issued under this chapter.

(c) Registration effective only while employed or associated. The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this chapter or an issuer that is offering, selling or purchasing its securities in this state.

(d) Limit on employment or association. It is unlawful for a broker-dealer, or an issuer engaged in offering, selling or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection (a) of this section or is exempt from registration under subsection (b) of this section.

(e) Limit on affiliations. Unless prohibited by a rule adopted or an order issued under this chapter, an individual may act as an agent for more than one (1) broker-dealer or one (1) issuer at a time.

**History.**

I.C., § 30-14-402, as added by 2004, ch. 45, § 2, p. 169; am. 2012, ch. 65, § 4, p. 171.

**Compiler's Notes.** The 2012 amendment,

by ch. 65, updated several federal references throughout the section and substituted "section 30-14-202(14)" for "sections 30-14-202(11) and 30-14-202(14) in paragraph (b)(4).

### 30-14-411. Postregistration requirements.

**Production of Records.**

Idaho department of finance did not have the authority to request a securities agent's list of clients' addresses and telephone numbers, her financial records, and her personal bank account records, as they were not the

type of records subject to the recordkeeping requirements, and, therefore, the agent's license should not have been suspended as a result of her refusal to produce these records. In re Karel, 144 Idaho 379, 162 P.3d 758 (2007).

### 30-14-412. Denial, revocation, suspension, withdrawal, restriction, condition or limitation of registration. —

(a) Disciplinary conditions — Applicants. If the administrator finds that the order is in the public interest and subsection (d) of this section authorizes the action, an order issued under this chapter may deny an application, or may condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser or investment adviser representative, and, if the applicant is a broker-dealer or investment adviser of any partner, officer, director or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

(b) Disciplinary conditions — Registrants. If the administrator finds that the order is in the public interest and subsection (d) of this section authorizes the action, an order issued under this chapter may revoke, suspend, condition or limit the registration of a registrant and, if the registrant is a broker-dealer or investment adviser of any partner, officer, director or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser. Provided however, the administrator may not:

(1) Institute a revocation or suspension proceeding under this subsection based on an order issued under a law of another state that is reported to the administrator or a designee of the administrator more than one (1) year after the date of the order on which it is based; or

(2) Under subsection (d)(5)(A) or (B) of this section, issue an order on the

basis of an order issued under the securities act of another state unless the other order was based on conduct for which subsection (d) of this section would authorize the action had the conduct occurred in this state.

(c) Disciplinary penalties — Registrants. If the administrator finds that the order is in the public interest and subsections (d)(1) through (6), (8), (9), (10), (12) or (13) of this section authorizes the action, an order under this chapter may censure, impose a bar or suspension from association with a broker-dealer or investment adviser registered in this state, or impose a civil penalty in an amount not to exceed five thousand dollars (\$5,000) for each violation, on a registrant and, if the registrant is a broker-dealer or investment adviser, a partner, officer, director or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

(d) Grounds for discipline. A person may be disciplined under subsections (a) through (c) of this section if the person:

(1) Has filed an application for registration in this state under this chapter or the predecessor act within the previous ten (10) years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) Willfully violated or willfully failed to comply with this chapter or the predecessor act or a rule adopted or an order issued under this chapter or the predecessor act within the previous ten (10) years;

(3) Has been convicted of any felony or within the previous ten (10) years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking or finance;

(4) Is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this chapter or the predecessor act, a state, the securities and exchange commission, or the United States from engaging in or continuing an act, practice or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking or finance;

(5) Is the subject of an order, issued after notice and opportunity for hearing by:

(A) The securities, depository institution, insurance or other financial services regulator of a state or by the securities and exchange commission or other federal agency denying, revoking, barring or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative;

(B) The securities regulator of a state or the securities and exchange commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser;

(C) The securities and exchange commission or a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization;

(D) A court adjudicating a United States postal service fraud order;



- (E) The insurance regulator of a state denying, suspending or revoking registration as an insurance agent; or
  - (F) A depository institution regulator suspending or barring the person from the depository institution business;
- (6) Is the subject of an adjudication or determination, after notice and opportunity for hearing, by the securities and exchange commission, the commodity futures trading commission; the federal trade commission; a federal depository institution regulator, or a depository institution, insurance or other financial services regulator of a state that the person willfully violated the securities act of 1933, the securities exchange act of 1934, the investment advisers act of 1940, the investment company act of 1940, or the commodity exchange act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking or finance is regulated;
- (7) Is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, provided however that the administrator may not enter an order against an applicant or registrant under this paragraph (7) without a finding of insolvency as to the applicant or registrant;
- (8) Refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under section 30-14-411(d), Idaho Code, or refuses access to a registrant's office to conduct an audit or inspection under section 30-14-411(d), Idaho Code;
- (9) Has failed to reasonably supervise an agent, investment adviser representative or other individual, if the agent, investment adviser representative or other individual was subject to the person's supervision and committed a violation of this chapter or the predecessor act or a rule adopted or an order issued under this chapter or the predecessor act within the previous ten (10) years;
- (10) Has not paid the proper filing fee within thirty (30) days after having been notified by the administrator of a deficiency, provided however that the administrator shall vacate an order under this paragraph (10) when the deficiency is corrected;
- (11) After notice and opportunity for a hearing, has been found within the previous ten (10) years:
- (A) By a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking or finance is regulated;
  - (B) To have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative or similar person; or
  - (C) To have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;
- (12) Is the subject of a cease and desist order issued by the securities and exchange commission or issued under the securities, commodities, investment, franchise, banking, finance or insurance laws of a state;

(13) Has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance or insurance business within the previous ten (10) years; or

(14) Is not qualified on the basis of factors such as training, experience and knowledge of the securities business. Provided however, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this paragraph (14) if the individual has successfully completed all examinations required by subsection (e) of this section. The administrator may require an applicant for registration under section 30-14-402 or 30-14-404, Idaho Code, who has not been registered in a state within the two (2) years preceding the filing of an application in this state to successfully complete an examination.

(e) Examinations. A rule adopted or an order issued under this chapter may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this chapter may waive, in whole or in part, an examination as to an individual and a rule adopted under this chapter may waive, in whole or in part, an examination as to a class of individuals if the administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(f) Summary process. The administrator may suspend or deny an application summarily; restrict, condition, limit or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator within thirty (30) days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(g) Procedural requirements. An order issued may not be issued under this section, except under subsection (f) of this section, without:

- (1) Appropriate notice to the applicant or registrant;
- (2) Opportunity for hearing; and
- (3) Findings of fact and conclusions of law in a record in accordance with chapter 52, title 67, Idaho Code.

(h) Control person liability. A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the administrator under subsections (a) through (c) of this section to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

(i) Limit on investigation or proceeding. The administrator may not institute a proceeding under subsection (a), (b) or (c) of this section based solely on material facts actually known by the administrator unless an investigation or the proceeding is instituted within one (1) year after the administrator actually acquires knowledge of the material facts.

#### History.

I.C., § 30-14-412, as added by 2004, ch. 45, § 2, p. 169; am. 2008, ch. 143, § 2, p. 420; am. 2012, ch. 65, § 5, p. 171.

**Compiler's Notes.** The federal references in subsection (d)(6) of this section are codified as follows: The Securities Act of 1933, 15 U.S.C.S., §§ 77a — 77aa; the Securities Exchange Act of 1934, 15 U.S.C.S., §§ 77b — 77e, 77j, 77k, 77m, 77o, 77s, 78a — 78o, 78o-3, and 78p — 78hh; the Investment Advisers Act of 1940, 15 U.S.C.S. §§ 80b-1 et seq.; the

Investment Company Act of 1940, 15 U.S.C.S. §§ 80a-1 et seq.; and the Commodity Exchange Act, 7 U.S.C.S. §§ 1 et seq.

The 2008 amendment, by ch. 143, in subsection (a) and in the introductory paragraph in subsection (b), substituted "or a partner" for "of a partner."

The 2012 amendment, by ch. 65, substituted "of any partner" for "or a partner" in subsection (a) and in the introductory paragraph in subsection (b).

## PART 5. FRAUD AND LIABILITIES

**30-14-501. General fraud.** — It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

- (1) To employ a device, scheme, or artifice to defraud;
- (2) To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
- (3) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person; or
- (4) To divert investor money to the personal use of the issuer, offeror or seller, or to pay prior investors without specifically disclosing that use before receiving the investor's money.

#### History.

I.C., § 30-14-501, as added by 2004, ch. 45, § 2, p. 169; am. 2012, ch. 65, § 6, p. 171.

**Compiler's Notes.** The 2012 amendment, by ch. 65, added subsection (4).

#### Summary Judgment Improper.

In suit by stock buyer alleging, inter alia,

securities fraud on the part of sellers, district court improperly granted summary judgment to sellers on fraud claim, as there were genuine issues of material fact concerning misleading financial information and misrepresentations made by sellers. *Mannos v. Moss*, 143 Idaho 927, 155 P.3d 1166 (2007).

## **30-14-502. Prohibited conduct in providing investment advice.** —

(a) Fraud in providing investment advice. It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities:

- (1) To employ a device, scheme, or artifice to defraud another person;
- (2) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person; or
- (3) To divert investor money to the personal use of the issuer, offeror or



seller, or to pay prior investors without specifically disclosing that use before receiving the investor's money.

(b) Rules defining fraud. A rule adopted under this chapter may define an act, practice, or course of business of an investment adviser or an investment adviser representative, as fraudulent, deceptive or manipulative, and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives, from engaging in acts, practices, and courses of business defined as fraudulent, deceptive or manipulative.

(c) Rules specifying contents of advisory contract. A rule adopted or an order issued under this chapter may specify the contents of an investment advisory contract entered into, extended or renewed by an investment adviser.

**History.**

I.C., § 30-14-502, as added by 2004, ch. 45, § 2, p. 169; am. 2012, ch. 65, § 7, p. 171.

**Compiler's Notes.**

The 2012 amendment, by ch. 65, added paragraph (a)(3).

### 30-14-509. Civil liability.

**Summary Judgment Improper.**

In suit by stock buyer alleging, inter alia, securities fraud on the part of sellers, district court improperly granted summary judgment to sellers on fraud claim, as there were genu-

ine issues of material fact concerning misleading financial information and misrepresentations made by sellers. *Mannos v. Moss*, 143 Idaho 927, 155 P.3d 1166 (2007).

## PART 6. ADMINISTRATION AND JUDICIAL REVIEW

**30-14-603. Civil enforcement.** — (a) Civil action instituted by administrator. If the administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or an order issued under this chapter or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this chapter or a rule adopted or an order issued under this chapter, the administrator may maintain an action in any court of competent jurisdiction to enjoin the act, practice, or course of business and to enforce compliance with this chapter or a rule adopted or an order issued under this chapter.

(b) Relief available. In an action under this section and on a proper showing, the court may:

(1) Issue a permanent or temporary injunction, restraining order, or declaratory judgment;

(2) Order other appropriate or ancillary relief, which may include:

(A) An asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the administrator, for the defendant or the defendant's assets;

(B) Ordering the administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;

(C) Imposing a civil penalty not to exceed ten thousand dollars (\$10,000) for each violation; an order of rescission, restitution, or

disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or the predecessor act or a rule adopted or an order issued under this chapter or the predecessor act; and

(D) Ordering the payment of prejudgment and postjudgment interest; or

(3) Order such other relief as the court considers appropriate.

(c) No bond required. The administrator shall not be required to post a bond in an action or proceeding under this chapter.

(d) Statute of limitation. If the administrator brings a civil action under this section, such action must be instituted within three (3) years from the discovery by the administrator of the facts constituting the alleged violation.

**History.**

I.C., § 30-14-603, as added by 2004, ch. 45, § 2, p. 169; am. 2012, ch. 65, § 8, p. 171.

**Compiler's Notes.** The 2012 amendment, by ch. 65, added subsection (d).

**30-14-611. Service of process.** — (a) Signed consent to service of process. A consent appointing the administrator the person's agent for service of process in a noncriminal action or proceeding against the person, or the person's successor or personal representative under this chapter or a rule adopted or an order issued under this chapter after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. Registrants shall be required to submit a consent to service of process only if there has been a material change.

(b) Conduct constituting appointment of agent for service. If a person, including a nonresident of this state, engages in an act, practice, or course of business prohibited or made actionable by this chapter or a rule adopted or an order issued under this chapter and the person has not filed a consent to service of process under subsection (a) of this section, the act, practice, or course of business constitutes the appointment of the administrator as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative.

(c) Procedure for service of process. Service under subsection (a) or (b) of this section may be made by providing a copy of the process to the office of the administrator, but it is not effective unless:

(1) The plaintiff, which may be the administrator, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice; and

(2) The plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the administrator in a proceeding before the administrator, allows.

(d) Service in administrative proceedings or civil actions by administrator. Service pursuant to subsection (c) of this section may be used in a proceeding before the administrator or by the administrator in a civil action in which the administrator is the moving party.

(e) Opportunity to defend. If process is served under subsection (c) of this section, the court, or the administrator in a proceeding before the administrator, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

#### History.

I.C., § 30-14-611, as added by 2004, ch. 45, § 2, p. 169; am. 2008, ch. 143, § 3, p. 423; am. 2012, ch. 65, § 9, p. 171.

**Compiler's Notes.** The 2008 amendment, by ch. 143, deleted the former second sentence in subsection (a), which read: "From September 1, 2004, through June 30, 2005, all per-

sons applying for registration or making a notice filing shall submit to the administrator a signed consent to service of process."

The 2012 amendment, by ch. 65, deleted "From July 1, 2005, and thereafter" from the beginning of the last sentence in subsection (a).

## CHAPTER 18

### IDAHO ENTITY TRANSACTIONS ACT

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## OFFICIAL COMMENT

## PREFATORY NOTE

**1. Development of the Act**

The Model Entity Transactions Act (META) is the result of a unique collaborative effort of the National Conference of Commissioners on Uniform State Laws (Conference) and the American Bar Association (ABA) to address an issue that cuts across their traditional areas of expertise.

For over 90 years, the Conference has prepared and periodically revised uniform laws governing general partnerships and limited partnerships. Similarly, for over 50 years committees of the ABA have prepared and periodically revised model laws for the incorporation of business corporations and nonprofit corporations.

During the past decade, three new types of business entities — limited liability companies, limited liability partnerships, and limited liability limited partnerships — have come into wide use; other forms of business entities once thought to be almost obsolete — most notably business trusts and cooperatives — have attained new prominence; and a form of entity previously organized only under the common law — unincorporated nonprofit associations — has been recognized by statute. Also during the past decade, restructuring transactions by and among all of the various types of entities began to occur with increased frequency. Because of a lack of clear statutory authority in most states, these restructuring transactions have often been completed in two or three indirect steps rather than directly in a single transaction.

The Conference included provisions permitting mergers among different forms of entities and authorizing the conversion of one form of entity to another in the Uniform Limited Liability Company Act (1996 and 2006), Uniform Limited Cooperative Association Act (2007), Uniform Partnership Act (1997), and Uniform Limited Partnership Act (2001). The ABA added similar provisions to the Model Business Corporation Act in 2003. In each case, the new provisions only apply if an entity of the type formed under the statute is a party to the transaction. Both the Conference and the ABA recognized, however, that a better approach would be for states to enact a single statute covering all types of restructuring transactions by and among all types of entity forms. Thus, the Conference and the ABA independently began projects to prepare a comprehensive statute to meet this need.

After beginning their independent drafting projects, both the Conference and the ABA realized that combining their respective areas of expertise would produce the best product for enactment by the states. They have ac-

cordingly combined their efforts so that the Model Entity Transactions Act draws on the expertise of the Conference in the law of unincorporated entities and of the ABA in the law of corporations.

Prior to the development of this act, state business organization statutes (both incorporated and unincorporated) varied in their approach to mergers involving the same or different types of entities, consolidations, conversions, share/interest exchanges, and domestications by or among domestic and foreign for-profit and nonprofit entities. The dissimilarities in state statutes included: (1) which transactions were authorized; (2) whether entities of more than one type could be parties to the same transaction; (3) inclusion of for-profit and nonprofit entities; (4) inclusion of incorporated and unincorporated organizations; and (5) single or dual status for converting, domesticating, or transferring entities. For example, The Uniform Partnership Act (1997) ("RUPA") authorized the conversion or merger of partnerships or limited partnerships. RUPA did not, however, authorize the conversion or merger of types of business entities other than partnerships or limited partnerships nor did it address interest exchanges or domestications. The Uniform Limited Partnership Act (1976 with 1985 amendments) ("RULPA") is silent regarding mergers and any form of transaction involving more than one type of entity. A RUPA limited partnership could, however, effect a conversion or merger by "linking back" to the limited RUPA merger or conversion provisions. The Uniform Limited Partnership Act (2001) ("Re-RULPA") anticipated for-profit and nonprofit conversions and mergers involving more than one type of entity, but not interest exchanges or domestications. The Uniform Limited Liability Company Act (1996) ("ULLCA") authorized mergers involving more than one type of entity and conversions but was silent regarding for-profit and nonprofit interest exchanges and domestications.

New Chapter 9 of the Revised Model Business Corporation Act ("MBCA"), approved in 2003, authorized a domestic business corporation to become a different type of entity and permitted a non-domestic business entity to become a domestic business corporation. The transactions addressed in Chapter 9 of the MBCA include: (1) domestication (a procedure in which a corporation may change its state of incorporation, either domestic to foreign, or foreign to domestic); (2) nonprofit conversion (a procedure that permits a domestic business corporation to become either a domestic nonprofit corporation or a foreign nonprofit corporation); (3) foreign nonprofit domestication

and conversion (a procedure that permits a foreign nonprofit corporation to become a domestic business corporation); and (4) entity conversion (procedures that authorize a domestic business corporation to become a domestic or foreign other entity or that permit a foreign other entity to become a domestic business corporation). Chapter 9 of the MBCA authorized only those transactions that involve a domestic business corporation either at the outset or at the termination of the transaction.

## 2. Scope of the Act

Article 1 [Part 1] of this act sets forth general provisions applicable to the other articles. It defines terms that are used throughout the act, specifies the general procedures for the filings required under other articles, and provides specific rules dealing with all transactions.

Article 2 [Part 2] governs mergers. Article 2 [Part 2] is derived in large part from existing corporation and unincorporated entity laws. Certain provisions dealing with necessary approvals, information required in the plan of merger, and some filing requirements represent an amalgamation of existing law.

Article 3 [Part 3] governs interest exchanges. The interest exchange transaction is derived from the share exchange in corporate law and reflected in Chapter 11 of the MBCA. Interest exchanges are not authorized as a separate form of transaction in any uniform unincorporated entity act.

Article 4 [Part 4] governs conversions. A conversion is a statutory procedure authorizing an entity to change its form of organization to another type of entity.

Article 5 [Part 5] governs domestications. It authorizes a foreign entity to become a domestic entity of the same type and authorizes a domestic entity to become a foreign entity of the same type so long as the laws of the foreign jurisdiction authorize the domestication.

Article 6 [Part 7] sets out certain miscellaneous provisions, including: (1) consistency of application; (2) e-sign language; (3) savings clause; and (4) effective date.

## 3. Approach of the Act

Mergers of two or more corporations into a surviving corporation have been an accepted part of corporation law for a long time and are found in all state corporation laws. On the other hand, mergers are a more recent development in unincorporated entity laws. Following the lead of the MBCA, some states have begun to authorize mergers of more than one type of entity in their corporation laws. States that have adopted RUPA, Re-RULPA, or ULLCA also have provisions on mergers of more than one type of entity and conversions in those laws. This act is drafted on the

assumption that states will not be comfortable repealing mergers completely out of their corporation laws or those unincorporated entity laws where merger provisions have begun to appear. To create a consistent pattern across their various entity laws, it is recommended that states limit the existing provisions on mergers in their entity laws to mergers involving the same type of entity. It is not necessary, however, for a state to add merger provisions to those entity laws that do not already contain them because this act has been drafted to authorize mergers for those entities not currently authorized to engage in such mergers. *See* Section 201 [§ 30-18-201].

The same approach taken with respect to mergers is incorporated into the design of the interest exchange provisions in this act. It is therefore recommended that enacting states limit their existing statutory provisions for these types of transactions to transactions those involving only the same type of entity. It will not be necessary for an enacting state to amend its existing interest exchange statutes that do not already contain such provisions since this act contains default rules that will authorize interest exchange transactions for those entities not already authorized to engage in such transactions. *See* Section 301 [§ 30-18-301].

Conversions are by definition transactions that involve more than one form of entity. Thus any conversion provisions outside of META should be repealed, leaving META as a state's only general entity conversion statute. Many states have specialized conversion statutes such as, for example, converting a mutual insurance company to a stock company. Those special conversion statutes should be preserved. *See* Section 110 [§ 30-18-110].

A different approach is taken with respect to domestications. A domestication is a transaction only involving a single form of entity in which an existing entity moves its jurisdiction of organization to another state but retains whatever form it had before the domestication. *See* Section 501 [§ 30-18-501]. Only a limited number of states currently have domestication statutes. Therefore, in order to avoid having to enact separate domestication provisions for all of the various entity statutes in virtually every state, META includes a separate article governing domestications. States do not need to repeal existing domestication provisions. *See* Section 501(e) [not adopted in Idaho] and Appendix 2 which does not provide for repeal of the domestication provisions in Subchapter 9B of the Model Business Corporation Act or in Article 10 of the Uniform Limited Liability Company Act (2006).

Alternatives to the recommended approach set forth above are outlined in Appendix 2. *See* also the Legislative Notes to Sections 201,



301, 401, and 501 [§ 30-18-201, 30-18-301, 30-18-401, and 30-18-501].

Finally, because merger statutes have stood the test of time and business lawyers are used to working with these provisions, a policy decision was made to incorporate basically the same requirements and substantive law rules in the articles dealing with interest exchanges, conversions, and domestications. In addition, an interest exchange (which is in effect a triangular merger accomplished without the need for the transitory third party to the triangular merger) is effectively a form of merger transaction; and a conversion or domestication can be accomplished through a

merger transaction by merging the converting or domesticating entity into a new form of entity (in the case of a conversion) or the same form of entity organized in a different state (in the case of a domestication). Thus, although there are differences because of the different nature of each type of transaction, the provisions in Sections 302 — 306 [§§ 30-18-302 to 30-18-306] (interest exchanges), 402 — 406 [§§ 30-18-402 to 30-18-406] (conversions), and 502 — 506 [§§ 30-18-502 to 30-18-506] (domestications) are patterned after and look quite similar to Sections 202 — 206 (mergers) [§§ 30-18-202 to 30-18-206].

## IDAHO REPORTER'S COMMENT

### PREFATORY NOTE

The intent of the Idaho entity transactions act ("IETA") is to make the law simpler and more flexible. The Act applies to all types of entities, including corporations, partnerships, limited liability companies, not-for-profit organizations, etc., and applies to entity transactions involving same and different-type entities, including all domestic or a combination of domestic and foreign entities. IETA is referred to as "junction box" statute because it facilitates a large variety of inputs and outputs in terms of what entities are involved in the transaction, and what entity is formed.

IETA covers four types of transactions: mergers, interest exchanges, conversions, and domestications. It does not cover asset sales or divisions. Mergers may include consolidations. Interest exchanges may include the common triangular, forward and reverse mergers. Conversions allow any type of entity to become a different type of entity; e.g., LLCs may convert to corporations, corporations may convert to partnerships, etc. Domestications allow entities to change their states of organization. Divisions include split-ups and spin-offs.

IETA procedurally facilitates almost any type of entity transaction or combination of entity transactions. Determining whether any such transaction is desirable involves legal, tax and business decisions outside the purview of the Act.

IETA has four substantive articles, each dealing with one type of transaction. Each article has six substantially similar sections. Those sections are as follows:

1. Transaction Authorization;
2. The Transaction Plan;
3. The Approval Process;
4. Amendments and Abandonment of the Plan;
5. Statement of the Transaction to be Filed with the Secretary of State's Office; and
6. The Effect of the Transaction.

There are also special provisions dealing with personal liability issues when a partnership converts to a corporation or vice versa.

All transactions that come within the scope of IETA will be covered exclusively by IETA. That is, conflicting provisions in other entity statutes will no longer apply. Those statutes will not be repealed as they will still be utilized by those few entities (such as banking and insurance entities and public entities) that are specifically excluded from the scope of the Act.

IETA deals with a broad range of transactions which may be subject to Idaho constitutional restrictions. It is important to consider any relevant constitutional provisions when drafting plans for entity restructuring. For example, Section 9, Article XI, Idaho Constitution, deals with issuance of stock and must be considered in any interest exchange. Also, Section 16, Article XI, Idaho Constitution, contains a definition of the term "corporation" that includes many entities not normally considered to be corporations.

While the IETA is intended to be comprehensive and define the procedures governing covered transactions, the Idaho drafting committee did not repeal all existing provisions in various current entity statutes. The committee decided to leave those statutes as is for two reasons. First, while few in number, there are some entities which are excluded from the scope of IETA and, accordingly, any relevant transactions entered into by those non-covered entities are still governed by the existing provisions. Second, voting provisions in the entity statutes continue to apply to those entities covered by IETA and participating in certain IETA transactions.



## PART 1. GENERAL PROVISIONS

**30-18-101. Short title.** — This chapter may be known and cited as the “Idaho Entity Transactions Act.”

**History.**

I.C., § 30-18-101, as added by 2007, ch. 116, § 1, p. 333.

**Compiler’s Notes.** Section 12 of S.L. 2007,

ch. 116, provided that the act should take effect on and after July 1, 2007.

**30-18-102. Definitions.** — In this chapter:

(1) “Acquired entity” means the entity, all of one (1) or more classes or series of interests in which are acquired in an interest exchange.

(2) “Acquiring entity” means the entity that acquires all of one (1) or more classes or series of interests of the acquired entity in an interest exchange.

(3) “Approve” means, in the case of an entity, for its governors and interest holders to take whatever steps are necessary under its organic rules, organic law, and other law to:

(a) Propose a transaction subject to this chapter;

(b) Adopt and approve the terms and conditions of the transaction; and

(c) Conduct any required proceedings or otherwise obtain any required votes or consents of the governors or interest holders.

(4) “Business corporation” means a corporation whose internal affairs are governed by the Idaho business corporation act, chapter 1, title 30, Idaho Code.

(5) “Conversion” means a transaction authorized by part 4 of this chapter.

(6) “Converted entity” means the converting entity as it continues in existence after a conversion.

(7) “Converting entity” means the domestic entity that approves a plan of conversion pursuant to section 30-18-403, Idaho Code, or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of organization.

(8) “Domestic entity” means an entity whose internal affairs are governed by the law of this state.

(9) “Domesticated entity” means the domesticating entity as it continues in existence after a domestication.

(10) “Domesticating entity” means the domestic entity that approves a plan of domestication pursuant to section 30-18-503, Idaho Code, or the foreign entity that approves a domestication pursuant to the law of its jurisdiction of organization.

(11) “Domestication” means a transaction authorized by part 5 of this chapter.

(12) “Entity” means:

(a) A business corporation;

(b) A nonprofit corporation;

(c) A general partnership, including a limited liability partnership;

(d) A limited partnership, including a limited liability limited partnership;

(e) A limited liability company;

(f) A statutory trust entity;

- (g) An unincorporated nonprofit association;
- (h) A cooperative;
- (i) A limited cooperative association; or
- (j) Any other person that has a separate legal existence or has the power to acquire an interest in real property in its own name other than:
  - (i) An individual;
  - (ii) A testamentary, inter vivos, or charitable trust, with the exception of a business trust or similar trust;
  - (iii) An association or relationship that is not a partnership solely by reason of section 53-3-202(c), Idaho Code, or a similar provision of the law of any other jurisdiction;
  - (iv) A decedent's estate; or
  - (v) A government, a governmental subdivision, agency, or instrumentality, or a quasi-governmental instrumentality.

(13) "Filing entity" means an entity that is created by the filing of a public organic document.

(14) "Foreign entity" means an entity other than a domestic entity.

(15) "Governance interest" means the right under the organic law or organic rules of an entity, other than as a governor, agent, assignee, or proxy, to:

- (a) Receive or demand access to information concerning, or the books and records of, the entity;
- (b) Vote for the election of the governors of the entity; or
- (c) Receive notice of or vote on any or all issues involving the internal affairs of the entity.

(16) "Governor" means a person by or under whose authority the powers of an entity are exercised and under whose direction the business and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(17) "Interest" means a:

- (a) Governance interest in an unincorporated entity;
- (b) Transferable interest in an unincorporated entity; or
- (c) Share or membership in a corporation.

(18) "Interest exchange" means a transaction authorized by part 3 of this chapter.

(19) "Interest holder" means a direct holder of an interest.

(20) "Interest holder liability" means:

(a) A personal liability for a liability of an entity that is imposed on a person:

- (i) Solely by reason of the status of the person as an interest holder; or
- (ii) By the organic rules of the entity pursuant to a provision of the organic law authorizing the organic rules to make one (1) or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or
- (b) An obligation of an interest holder under the organic rules of an entity to contribute to the entity.

(21) "Jurisdiction of organization" of an entity means the jurisdiction whose law includes the organic law of the entity.

(22) "Liability" includes a liability arising in any manner, regardless of whether it is secured or whether it is contingent.

(23) "Merger" means a transaction in which two (2) or more merging entities are combined into a surviving entity pursuant to a filing with the secretary of state.

(24) "Merging entity" means an entity that is a party to a merger and exists immediately before the merger becomes effective.

(25) "Nonprofit corporation" means a corporation whose internal affairs are governed by the Idaho nonprofit corporation act, chapter 3, title 30, Idaho Code.

(26) "Organic law" means the statutes, if any, other than this chapter, governing the internal affairs of an entity.

(27) "Organic rules" means the public organic document and private organic rules of an entity.

(28) "Person" means an individual, corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, unincorporated nonprofit association or any other legal or commercial entity.

(29) "Plan" means a plan of merger, interest exchange, conversion or domestication.

(30) "Private organic rules" means rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders, and are not part of its public organic document, if any.

(31) "Protected agreement" means:

(a) A record evidencing indebtedness and any related agreement in effect on the effective date of this chapter;

(b) An agreement that is binding on an entity on the effective date of this chapter;

(c) The organic rules of an entity in effect on the effective date of this chapter; or

(d) An agreement that is binding on any of the governors or interest holders of an entity on the effective date of this chapter.

(32) "Public organic document" means the public record the filing of which creates an entity, and any amendment to or restatement of that record.

(33) "Qualified foreign entity" means a foreign entity that is authorized to transact business in this state pursuant to a filing with the secretary of state.

(34) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(35) "Sign" means, with present intent to authenticate or adopt a record to:

(a) Execute or adopt a tangible symbol; or

(b) Attach to or logically associate with the record an electronic sound, symbol, or process.

(36) "Surviving entity" means the entity that continues in existence after or is created by a merger.



(37) “Transferable interest” means the right under an entity’s organic law to receive distributions from the entity.

(38) “Type,” with regard to an entity, means a generic form of entity:

(a) Recognized at common law; or

(b) Organized under an organic law, whether or not some entities organized under that organic law are subject to provisions of that law that create different categories of the form of entity.

#### History.

I.C., § 30-18-102, as added by 2007, ch. 116, § 1, p. 333; am. 2008, ch. 36, § 2, p. 73.

**Compiler’s Notes.** The words “the effective date of this chapter”, referred to in paragraphs (28)(a), (28)(b), and (28)(c), mean July 1, 2007, the effective date of S.L. 2007, Chapter 116.

Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

The 2008 amendment, by ch. 36, in subsection (2), substituted “acquired entity” for “exchanging entity”; added subsection (4) and

redesignated the subsequent subsections accordingly; added paragraphs (12)(a) through (12)(i) and paragraph (20)(b) and made related redesignations; in subsection (22), substituted “regardless of whether it is secured or whether it is contingent” for “whether or not it is secured or contingent”; added subsection (25); and rewrote subsection (31), which formerly read: “A debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, issued or signed by an entity which is unpaid, in whole or in part, on the effective date of this chapter.”

### OFFICIAL COMMENT

**General** — This section defines the terms that will be used in other parts of the act. Many of the definitions describe attributes that are significant in some forms of entity and not in others. For example, the concept of separate “transferable” and “governance” interests are inherent in unincorporated entities but have no counterpart in corporations. In addition, because some statutes use different terms to describe the same transaction, the definitions are intended to be broad enough to encompass those similar transactions, regardless of how described. See, for example, “domestication” below.

**“Acquired entity” [(1)]** — This definition recognizes that an interest exchange may involve only the acquisition of a particular “class” or “series” of interests in an entity. Model Business Corporation Act § 6.01 does not expressly define “classes” or “series.” Because the interests of members in an unincorporated business organization often tend to be distinctive, it may be that each member’s interest will comprise a separate class or series.

**“Acquiring entity” [(2)]** — An “acquiring entity” is an entity that acquires the interests of the acquired entity in an interest exchange governed by Article 3 [§ 30-18-301 et seq.].

**“Approve” [(3)]** — The term “approve” encompasses all of the steps necessary for an entity to propose a transaction, adopt and approve the terms and conditions of the transaction, and obtain the necessary action on the transaction by the governors and interest holders of the entity. The term includes pro-

cedural requirements such as notice to interest holders, preparation of voting lists, etc. The principal laws that will govern approval by an entity of a transaction under this act are the entity’s organic law and this act, but regulatory laws may also apply.

**“Business corporation” [(4)]** — Business corporations and nonprofit corporations are the only specific types of entities referred to in other articles of the act and thus defined terms to facilitate reference to them have been included in this section. Defined terms for other specific types of entities are not needed in the other articles of the act.

**“Conversion” [(5)]** — The term “conversion” means a transaction authorized by Article 4 [§ 30-18-401 et seq.] pursuant to which an entity of one type is converted into an entity of another type. As used in this act, the term “conversion” does not include a transaction in which an entity changes the jurisdiction in which it is organized but does not change to a different form of entity; that type of transaction is referred to in this act as a “domestication” and is governed by Article 5 [§ 30-18-501 et seq.].

**“Converted entity” [(6)]** — This term is used in Article 4 [§ 30-18-401 et seq.] to describe the entity that results from a conversion.

**“Converting entity” [(7)]** — A converting entity is the entity that becomes the converted entity under Article 4 [§ 30-18-401 et seq.]. This definition is patterned in part after Model Business Corporation Act § 9.50(f)(1) (“converting entity”).

**“Domestic entity” [(8)]** — The term “domestic entity” in this act means an entity whose internal affairs are governed by the organic laws of the adopting jurisdiction. Except in the case of general partnerships, this will mean an entity that is formed, organized, or incorporated under domestic law. In the case of a general partnership organized under the Uniform Partnership Act (1997) (“RUPA”), it will mean a general partnership whose governing law under RUPA § 106 is the law of the adopting state. Under RUPA § 106 the governing law is determined by the location of the partnership’s chief executive office, except for limited liability partnerships where the governing law is the state where the statement of qualification is filed.

**“Domesticated entity” [(9)]** — This term is used in Article 5 [§ 30-18-501 et seq.] and means the entity that is domesticated pursuant to Article 5. By the nature of the transaction, the domesticated entity will be of the same type as the domesticating entity.

**“Domesticating entity” [(10)]** — This term is used in Article 5 [§ 30-18-501 et seq.] and means the entity that is domesticated pursuant to Article 5.

**“Domestication” [(11)]** — The term “domestication” means a transaction of the kind authorized by Article 5 [§ 30-18-501 et seq.] pursuant to which an entity may change its jurisdiction of formation *but not its type* so long as the laws of the foreign jurisdiction permit the domestication. The legal effect of the domestication of an entity out of an adopting state will be governed by the laws of both the adopting state and the foreign jurisdiction. Some statutes include what is described in this act as “domestication” in their definition of a “conversion.” See, e.g., Colo. Rev. Stat § 7-90-201(2) and (3). It is intended that the domestication provisions of this act will apply to a transaction that may be characterized under another act as a “conversion” if it meets the definition of “domestication” under this act.

**“Entity” [(12)]** — This definition determines the overall scope of the act because only an “entity” may participate in the transactions authorized by Articles 2, 3, 4, and 5. See Sections 201, 301, 401, and 501 [§§ 30-18-201, 30-18-301, 30-18-401, and 30-18-501].

Paragraph (I) [j] is a “catch-all” provision that includes within the definition of “entity” any type of organization authorized under an enacting state’s law that is not listed specifically in the preceding paragraphs of this definition. Paragraph (I) [j] is intended to include all forms of private organizations, regardless of whether organized for profit, and artificial legal persons other than those excluded by subparagraphs (I)(i) through (v) [j](i) to (v)]. Thus, this definition is broader than the definition of “business entity” in e.g.,

Code of Ala. § 10-15-2(2) which does not include nonprofit entities. This definition does not exclude regulated entities such as public utilities, banks and insurance companies. Should a state desire to exclude certain types of regulated entities from participating in transactions permitted by the act for policy reasons, that may be done by listing those types of entities in Section 110(a) [§ 30-18-110], or by permitting those type of entities to engage in transactions under this act generally but prohibiting certain types of transactions by listing those transactions in Section 110(b) [not adopted in Idaho].

*Inter vivos* and testamentary trusts are treated in many states as having a separate legal existence, but they have been excluded from the definition of “entity” (and thus are not within the scope of this act) because of a decision that for public policy reasons they should not be able to engage in transactions under this act. Trusts that carry on a business, however, such as a Massachusetts trust, real estate investment trust, Illinois land trust, or other common law or statutory business trusts are “entities.”

Section 4 of the Uniform Unincorporated Nonprofit Association Act gives an unincorporated nonprofit association the power to acquire an estate in real property and thus an unincorporated nonprofit association organized in a state that has adopted that act will be an “entity.” At common law, an unincorporated nonprofit association was not a legal entity and did not have the power to acquire real property. Most states that have not adopted the Uniform Act have nonetheless modified the common law rule, but states that have not adopted the Uniform Act should analyze whether they should modify the definition of “entity” to add an express reference to unincorporated nonprofit associations.

There is some question as to whether a partnership subject to the Uniform Partnership Act (1914) (“UPA”) is an entity or merely an aggregation of its partners. That question has been resolved by Section 201 of the Uniform Partnership Act (1997) (“RUPA”), which makes clear that a general partnership is an entity with its own separate legal existence. Section 8 of UPA gives partnerships subject to it the power to acquire estates in real property and thus such a partnership will be an “entity.” As a result, all general partnerships will be “entities” regardless of whether the state in which they are organized has adopted RUPA.

Paragraph (H)(i) [j](i)] of this definition excludes a sole proprietorship from the concept of an “entity.”

Subparagraph (I)(iii) [j](iii)] of this definition excludes from the concept of an “entity” any form of co-ownership of property or sharing of returns from property that is not a



partnership under RUPA. In that connection, Section 202(c) of RUPA provides in part:

In determining whether a partnership is formed, the following rules apply:

(1) Joint tenancy, tenancy in common, tenancy by the entirety, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

Limited liability partnerships and limited liability limited partnerships are "entities" because they are general partnerships and limited partnerships, respectively, that have made the additional required election claiming LLP or LLLP status. A limited liability partnership is not, therefore, a separate type of entity from the underlying general or limited partnership that has elected limited liability partnership status. Thus, for example, the election of a general partnership to become a limited liability partnership is not a conversion subject to Article 4 [ § 30-18-401 et seq].

**"Filing entity" [(13)]** — Whether an entity is a filing entity is determined by reference to whether its legal existence is attributable to the filing of a document with the state filing officer. While the statute refers to an entity that is "created," it is intended to encompass corporations which are "incorporated," limited liability companies which are "organized," and limited partnerships which are "formed" by a filing required by the organic law governing the entity. Business trusts present a special problem. In some states, for example, a business trust is a filing entity, while in other states business trusts are recognized only by common law.

The term does not include a limited liability partnership because an election filed by a general partnership claiming that status (*e.g.*, a statement of qualification under Uniform Partnership Act (1997), § 1001) does not create the entity. A limited liability limited partnership, on the other hand, is a filing entity because the underlying limited partnership is created by filing a certificate of limited partnership.

This definition is patterned after Model Business Corporation Act § 1.40(9A) ("filing entity").

**"Foreign entity" [(14)]** — The term "foreign entity" includes any non-domestic entity of any type. Where a foreign entity is a filing entity, the entity is governed by the laws of the state of filing. A nonfiling foreign entity is governed by the laws governing its internal affairs. It is a factual question whether a

general partnership whose internal affairs are governed by the Uniform Partnership Act (1914) ("UPA") is a domestic or foreign partnership. A UPA partnership will likely be deemed to be a domestic entity where the greatest nexus of contacts are found. The domestic or foreign characterization of partnerships under the Uniform Partnership Act (1997) ("RUPA") that have not registered as limited liability partnerships will be governed by RUPA § 106(a) ("state where the partnership's chief executive office is located").

**"Governance interest" [(15)]** — A governance interest is typically only part of the interest that a person will hold in an entity and is usually coupled with a transferable interest (or economic rights). However, memberships in some nonprofit corporations and unincorporated nonprofit associations consist solely of governance interests and in others may not include either governance interests or transferable interests. In some unincorporated business entities, there is a more limited right to transfer governance interests than there is to transfer transferable interests. An interest holder in such an unincorporated business entity who transfers only a transferable interest and retains the governance interest will also retain the status of an interest holder. Whether a transferee who acquires only a transferable interest will acquire the status of an interest holder is determined by the definition of "interest holder."

Shares in a business corporation that are nonvoting nonetheless have a governance interest because they entitle the holder to certain rights of access to information and to statutory voting rights on certain amendments of the articles of incorporation and certain mergers and share exchanges.

Governors of an entity have the kinds of rights listed in the definition of "governance interest" by reason of their position with the entity. For a governor to have a "governance interest," however, requires that the governor also have those rights for a reason other than the governor's status as such. A manager who is not a member in a limited liability company, for example, will not have a governance interest, but a manager who is a member will have a governance interest arising from the ownership of a membership interest.

**"Governor" [(16)]** — This term has been chosen to provide a way of referring to a person who has the authority under an entity's organic law to make management decisions regarding the entity that is different from any of the existing terms used in connection with particular types of entities. *Compare* Colo. § 7-90-102(35.7) which uses the term "manager" to refer to this concept, even though "manager" is also a term of art in connection with limited liability companies. Depending on the type of entity or its organic



rules, the governors of an entity may have the power to act on their own authority, or they may be organized as a board or similar group and only have the power to act collectively, and then only through a designated agent. In other words, a person having only the power to bind the organization pursuant to the instruction of the governors is not a governor. Under the organic rules, particularly those of unincorporated entities, most or all of the management decisions may be reserved to the members or partners. Thus, if a manager of a limited liability company were limited to having authority to execute management decisions made by the members and did not have any authority to make independent management decisions, the manager would not be a governor under this definition.

Except as described above, the term “governor” includes:

- Director of a business corporation.
- Director or trustee of a nonprofit corporation.
- General partner of a general partnership.
- General partner of a limited partnership.
- Manager of a limited liability company.
- Member of a member-managed limited liability company.
- Trustee of a business trust or statutory trust entity.
- Director of a cooperative.

**“Interest” [(17)]** — In the usual case, the interest held by an interest holder will include both a governance interest and a transferable interest (or economic rights). Members in certain nonprofit corporations or unincorporated nonprofit associations generally do not have any transferable interest because they may not receive distributions, but they nonetheless may hold a governance interest in which case they would have the status of interest holders under this act. An interest holder in an unincorporated business entity may transfer all or part of the interest holder’s transferable interest without the transferee’s acquiring the governance interest of the transferor. In that case, whether the transferor will retain the status of an interest holder will be determined by the applicable organic law and the transferee will have the status of an interest holder under paragraph (B) [(b)] of this definition. That paragraph will also apply to subsequent transferees from the original transferee.

The term “interest” includes:

- Beneficial interest in a business trust or statutory trust entity.
- Membership in a nonprofit corporation.
- Membership in an unincorporated nonprofit association.
- Membership interest in a limited liability company.

- Partnership interest in a general partnership.
- Partnership interest in a limited partnership.
- Shares in a business corporation.
- Membership interest in a cooperative.

**“Interest exchange” [(18)]** — The term “interest exchange” means a transaction authorized by Article 3 [§ 30-18-301 et seq.] pursuant to which an entity may acquire interests in another entity. The consideration that may be provided to the interest holders whose interests are being acquired in an exchange may consist in whole or part of interests in a third party that is not one of the two parties to the exchange itself. *See* Section 301(a) [§ 30-18-301(1)].

**“Interest holder” [(19)]** — This act does not refer to “equity” interests or “equity” owners or holders because the term “equity” could be confusing in the case of a nonprofit entity whose members do not have an interest in the assets or results of operations of the entity but only have a right to vote on its internal affairs. *Compare* Code of Ala. § 10-15-2(4) (“equity owner”).

The term “interest holder” includes:

- Beneficiary of a business trust or statutory trust entity.
- General partner of a general partnership.
- General partner of a limited partnership.
- Limited partner of a limited partnership.
- Member of a limited liability company.
- Member of a nonprofit corporation.
- Member of an unincorporated nonprofit association.
- Shareholder of a business corporation.
- Member of a cooperative.

This definition has been patterned after Model Business Corporation Act § 1.40(13B) (“interest holder”).

**“Interest holder liability” [(20)]** — This term is used to describe the vicarious liability of an interest holder, by virtue of being an interest holder, for liabilities of the entity. The term includes only personal liability of an interest holder for a debt of the entity imposed on the interest holder either by statute or by the organic rules to the extent authorized pursuant to the organic law. Liabilities that an interest holder incurs in any other fashion are not interest holder liabilities for purposes of this act. Thus, for example, if a state’s business corporation law makes shareholders personally liable for unpaid wages because of their status as shareholders, that liability would be an “interest holder liability.” If, on the other hand, a shareholder were to guarantee payment of an obligation of a corporation, that liability would not be an “interest holder liability” because it is a direct liability and not based on the status of being a shareholder. Similarly, the liability to make

contributions to the entity or to return an improper distribution is not an interest holder liability because it is a direct liability of the interest holder even though creditors of the entity might be able to recover from the interest holder.

This definition is patterned after Model Business Corporation Act § 1.40(15C) (“owner liability”). *See also* Uniform Limited Partnership Act (2001), § 1101(11) (“personal liability”).

**“Jurisdiction of organization” [(21)]** — The term “jurisdiction of organization” refers to the jurisdiction whose laws include the organic law of the entity. The scope of this act is not limited to United States jurisdictions, although for practical purposes that will largely be the case since a transaction that impinges on a foreign country may be conducted under this act only if the laws of the foreign country authorize the transaction. *See* Sections 201(b), 301(b), 401(b), and 501(b) [§ 30-18-201(2), 30-18-301(2), 30-18-401(2), and 30-18-501(2)].

**“Liability” [(22)]** — The term “liability” is intended to be all-inclusive and includes all obligations of whatever description or kind. It includes anything that would be a liability under generally accepted accounting principles. It also includes contingent liabilities, and in general any obligation owed to another person.

**“Merger” [(23)]** — The term means a transaction in which two or more entities are combined into a single entity pursuant to a filing with the Secretary of State. The term “merger” in this act includes the transaction known as a consolidation in which a new entity results from the combination of two or more pre-existing entities.

**“Merging entity” [(24)]** — The term “merging entity” refers to each entity that is in existence immediately before a merger and is a party to the merger. It will include the surviving entity if the surviving entity exists before the merger becomes effective. It does not include an entity that provides consideration to be received by interest holders if that entity is not a party to the merger.

**“Nonprofit corporation” [(25)]** — Nonprofit corporations and business corporations are the only specific types of entities referred to in the act and thus defined terms to facilitate reference to them have been included in this section. Defined terms for other specific types of entities are not needed in the act.

**“Organic law” [(26)]** — Organic law includes statutes other than this act that govern the internal affairs of an entity. To the extent these other statutes should be applicable to a transaction under this act, their effect is preserved by Section 103 [§ 30-18-103].

Entity laws in a few states purport to require that some of their internal gover-

nance rules applicable to a domestic entity also apply to a foreign entity with significant ties to the state. *See, e.g.*, Cal. Gen. Corp. Law § 2115, N.Y. N-PCL §§ 1318-1321, 15 Pa.C.S. § 6145. Such a “sticky fingers” law is included within the definition of “organic law” for purposes of this act.

**“Organic rules” [(27)]** — The term “organic rules” means an entity’s public organic document and the private organic rules. The organic rules, together with this act, the organic law, and the common law provide the rules governing the internal affairs of the entity.

**“Person” [(28)]** — The term “person” has the standard meaning of that term in uniform acts.

**“Plan” [(29)]** — The term “plan” refers to the plan of merger, interest exchange, conversion, or domestication, as the case may be, depending on which form of transaction is taking place. *See* Sections 202, 302, 402, and 502 [§§ 30-18-202, 30-18-302, 30-18-402, and 30-18-502].

**“Private organic rules” [(30)]** — The term private “organic rules” is intended to include all governing rules of an entity that are binding on all of its interest holders, whether or not in written form, except for the provisions of the entity’s public organic document, if any. The term is intended to include agreements in “record” form as well as oral partnership agreements and oral operating agreements among LLC members. Where private organic rules have been amended or restated, the term means the private organic rules as last amended or restated.

The term “private organic rules” includes:

- Bylaws of a business corporation.
- Bylaws of a business trust or statutory trust entity.
- Bylaws of a nonprofit corporation.
- Constitution and bylaws of an unincorporated nonprofit association.
- Operating agreement of a limited liability company.
- Partnership agreement of a general partnership.
- Partnership agreement of a limited partnership.
- Bylaws of a cooperative.

**“Protected agreement” [(31)]** — The term “protected agreement” refers to evidences of indebtedness and agreements binding on the entity or any of its governors or interest holders that are unpaid or executory in whole or in part on the effective date of the act. Thus a revolving line of credit from a bank to a corporation would constitute a protected agreement even if advances were not made until after the effective date of the act. If a protected agreement has provisions that apply if an entity merges, those provisions will apply if the entity enters into an interest



exchange, conversion, or domestication even though the agreement does not mention those other types of transactions. *See* Sections 301(d), 401(c), and 501(d) §§ 30-18-301(d), 30-18-401(c), and 30-18-501(d)].

**“Public organic document” [(32)]** — A “public organic document” is a document that is filed of public record to form, organize, incorporate, or otherwise create an entity. The term does not include a statement of partnership authority filed under Section 303 of the Uniform Partnership Act (1997) or any of the other statements that may be filed under that act since those statements do not create a new entity. A limited liability partnership is the same entity as the partnership that files the statement. For the same reason, the term also does not include a statement of qualification filed under Section 1001 of that act to become a limited liability partnership. Similarly, the term does not include a statement of authority filed under Section 5 of the Uniform Unincorporated Nonprofit Association Act or a statement appointing an agent filed under Section 10 of that act. Where a public organic document has been amended or restated, the term means the public organic document as last amended or restated.

The term “public organic document” includes:

- Articles of incorporation of a business corporation.
- Articles of incorporation of a nonprofit corporation.
- Certificate of limited partnership.
- Certificate of organization of a limited liability company.
- Articles of organization of a cooperative

In those states where a deed of trust or other instrument is publicly filed to create a business trust, that filing will constitute a public organic document. But in those states where a business trust is not created by a public filing, the deed of trust or similar

document will be part of the private organic rules of the business trust.

**“Qualified foreign entity” [(33)]** — The term “qualified foreign entity” refers to an entity that is authorized to transact business in the state pursuant to a public filing.

**“Record” [(34)]** — The term “record” is taken from the Uniform Electronic Transactions Act. It is intended to apply broadly and include all information so long as the information is retrievable in a “perceivable” form.

**“Sign” [(35)]** — The term “sign” and its derivations are taken from the Uniform Electronic Transactions Act. In the case of filed documents, it should be noted that some state statutes no longer require filed documents to be “signed” in order to facilitate electronic filing. *See, e.g.,* Colorado Rev. Stat. § 7-90-301 *et seq.* In such cases, this act should be modified to delete the references to filings being “signed” and merely refer to being filed (or accepted for filing).

**“Surviving entity” [(36)]** — The term “surviving entity” refers to either a merging entity that survives the merger or the new entity created by the merger.

**“Transferable interest” [(37)]** — The term “transferable interest” is taken from Section 102(22) of the Uniform Limited Partnership Act (2001).

**“Type” [(38)]** — The term “type” has been developed in an attempt to distinguish different legal forms of entities. It is sometimes difficult to decide whether one is dealing with a different form of entity or a variation of the same form. For example, a limited partnership, although it has been defined as a partnership, is a different type of entity from a general partnership, while a limited liability partnership is not a different type of entity from a general partnership. In some states cooperative corporations are categories of business corporations or nonprofit corporations, while in other states cooperatives are a separate type of entity.

## IDAHO REPORTER’S COMMENT

**Section 30-18-102(12)** This section is intended to provide a broad definition of “entities” subject to the Idaho Entity Transaction Act and to exclude from the Act only a narrow list of organizations in order to facilitate the policy that the Act should apply as broadly as possible to facilitate entity restructuring transactions. The Act, however, is not intended to apply to all entities and this subsection defines what entities are not covered by the Act. The Act does not apply, for example, to entities created under Title 15, Idaho Code; *inter vivos* and testamentary trusts; trusts created under Title 68, Idaho Code; or state charitable institutions created under Title 66, Idaho Code.

**Section 30-18-102(12)(j)(v)** This subsection excludes governmental and quasi-governmental entities, including entities on which a public official is a board member as part of his or her official responsibilities, from the scope of the Act. These entities include, without limitation:

- Idaho Transportation Board (Idaho Code § 21-101),
- Cemetery Associations (Title 27, Idaho Code),
- County Governments (Title 31, Idaho Code),
- Educational Entities (Title 33 (except Chapter 24), Idaho Code),
- Healthcare Entities (Title 39, Idaho Code),



- Municipal Corporations (Title 50, Idaho Code),
- Professional Boards (Title 54, Idaho Code),
- State Government (Title 67, Idaho Code),
- Water Courses and Port Districts (Title 70, Idaho Code), and
- State Insurance Fund (Chapter 9, Title 72, Idaho Code) and the Industrial Special Indemnity Fund (Idaho Code § 72-323 *et seq.*).

This listing is not intended to be exhaustive.

**Section 30-18-102(28)** The Idaho Constitution, Section 16, Article XI, contains a definition of the term “corporation” which has the effect of making Idaho constitutional restrictions on corporations applicable to many other “entities” under this Act.

While the Model Act generally excludes unincorporated associations from the scope of the Act, the Idaho Act specifically includes unincorporated nonprofit associations organized pursuant to Chapter 7, Title 53, Idaho Code, the “Uniform Unincorporated Nonprofit Association Act,” as such associations have statutory power to acquire an interest in real property.

**Section 30-18-102(30)** Private organic rules may be written, oral or develop through course of dealing. This statute does not change existing substantive law regarding the burden of proof to establish the existence of such agreements.

**Section 30-18-102(37)** The Model Act defines the term “transferable interest” to mean essentially an economic interest in the entity without governance rights. The term is also used in other uniform statutes. The fact that the IETA uses the term does not imply that transferability of a transferable interest cannot be restricted. See, for example, the Limited Liability Company Act, I.C. § 53-601, *et seq.*, and the Limited Partnership Act, I.C. § 53-201, *et seq.*

**30-18-103. Relationship of chapter to other laws.** — (1) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(2) This chapter does not authorize an act prohibited by, and does not affect the application or requirements of, law other than this chapter.

(3) A transaction effected under this chapter may not create or impair any right or obligation on the part of a person under a provision of the law of this state other than this chapter relating to a change in control, takeover, business combination, control-share acquisition, or similar transaction involving a domestic merging, acquired, converting, or domesticating corporation unless:

(a) If the corporation does not survive the transaction, the transaction satisfies any requirements of the provision; or

(b) If the corporation survives the transaction, the plan is approved by a vote of the shareholders or directors that would be sufficient to create or impair the right or obligation by a vote of the shareholders or directors.

#### History.

I.C., § 30-18-103, as added by 2007, ch. 116, § 1, p. 333.

#### Compiler's Notes.

Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

### OFFICIAL COMMENT

1. **Section 103(a) [§ 30-18-103(1)]** — Section 103(a) [(1)] is a standard provision in uniform acts and has been included to make clear that unless a particular provision of this act displaces “other law,” the principles of law and equity continue to apply, including with respect to the rights of interest holders, creditors, transferees, assignees, or other similar parties. Thus subsection (a) [(1)] preserves case law regarding common law fraud; the rights of creditors following leveraged buy-

outs, spinoffs, asset purchases, or other similar transactions; creditors rights under other laws; the liability of governors for distributions; and creditor rights arising under the various organic laws of unincorporated entities, including when the right to partner contribution arises and the liability of an unincorporated entity for unlawful distributions during or resulting in insolvency of the entity.

2. **Section 103(b) [§ 30-18-103(2)]** — Subsection (b) [(2)] preserves existing regulatory

law in an adopting state in general terms. Adopting states should consider more carefully integrating this act with their various regulatory laws. For example, in some states certain professions are limited in their use of limited liability entities. *See also* Section 104 [§ 30-18-104].

Laws other than this act that will apply to transactions under the act include, for example, the various uniform fraudulent transfer and fraudulent conveyance acts; state insolvency statutes; federal bankruptcy law; and Articles 8 and 9 of the UCC.

**3. Section 103(c) [§ 30-18-103(3)]** — Many states have enacted “antitakeover” statutes intended to make it more difficult to acquire control of a publicly-traded corporation. Those statutes often provide that their application to a particular corporation cannot be changed unless the corporation obtains certain specified approvals, such as a vote of disinterested directors or a supermajority vote by the shareholders. The purpose of the

special requirements in subsection (c) [(3)] on varying the application of an antitakeover statute is to protect against a hostile acquirer or group of shareholders seeking to use the act to avoid the application of the antitakeover statute.

Subsection (c) [(3)] protects the application of antitakeover statutes from being affected by a transaction under this act by requiring that the transaction be approved in a manner that would be sufficient to approve changing the application of the antitakeover statute. If a transaction is approved in that manner, there is no policy reason to prohibit the application of the antitakeover statute from being varied by a transaction under this act. If the application of an antitakeover statute cannot be varied by action of an entity subject to it, then a transaction under this act will be permissible only if the antitakeover provision continues to apply after the transaction or the transaction itself is permissible under the antitakeover statute.

### IDAHO REPORTER'S COMMENT

**Section 30-18-103** The Idaho Entity Transactions Act does not insulate restructuring transactions from the application of general law in Idaho. Accordingly, IETA transactions must be subjected to analysis under the general laws of Idaho including, e.g., antitrust law (such as Section 18, Article XI, Idaho Constitution, and the Idaho Competition Act, Idaho Code § 48-101 *et seq.*) and tax provisions, as well as federal law.

Voting requirements are generally governed, first, by the existing organic rules of the entity for approving the particular type of transactions, second, if there are no provisions in the entity's organic rules laws applicable to the particular type of transaction, by the voting requirements, if any, in its organic laws for a merger, and third, if there are no provisions applicable to a merger, by an unanimous vote. For instance, see Section 30-18-303(1)(a).

IETA replaces I.C. § 30-1102, the regular corporate merger section, for corporations governed by IETA. The voting requirements for regular corporate mergers for which there are no organic rules applicable to mergers continue to be set forth in Section 30-1-1104, Idaho Code, which applies to IETA mergers and under Section 30-18-203(1)(a)(i) and similar provisions of other chapters of IETA, to other instances where approval is to be the same as for a merger. The short form merger, Section 30-1-1105, Idaho Code, is not a transaction covered by IETA and is not replaced by IETA. Therefore, the voting requirements of Section 30-1-1105, Idaho Code, will never apply to an IETA transaction.

The Act does not override specific professional entity statutes or professional ethics in Idaho. To the extent professional entities are involved in any IETA transaction, each entity involved in the transaction will need to comply with applicable professional entity statutes. See, for example, Idaho Code §§ 54-212 and 54-214, which establish requirements for accountants' organizations. Moreover, if a foreign professional entity is involved in a transaction falling within the IETA, the foreign professional entity may be required to follow Idaho professional ethical and procedural rules, such as Section 53-615, Idaho Code, which prescribes organizational structure, pursuant to Section 53-650, Idaho Code.

Existing regulatory law is preserved. It is important to consult other applicable statutes, for example, the Uniform Securities Act, Chapter 14, Title 30, Idaho Code, the Idaho Residential Mortgage Practices Act, Chapter 31, Title 26, Idaho Code, the Idaho Collection Agency Act, Chapter 22, Title 26, Idaho Code, and the Idaho Nonprofit Hospital Sale or Conversion Act, Chapter 15, Title 48, Idaho Code, which proscribe certain activities, impose conditions and/or require certain notices and approvals. Thus, where governmental approval was necessary before the adoption of this Act, such approval is still required for any transactions occurring under this Act.

This section specifically requires that IETA transactions must comply with applicable requirements of Idaho takeover statutes. Takeover statutes include those contained in the Control Share Acquisition Act, Chapter 16, Title 30, Idaho Code, the Business Combination Act,



Chapter 17, Title 30, Idaho Code, and the Idaho Competition Act, Chapter 1, Title 48, Idaho Code. Those statutes should be consulted and, to the extent applicable, followed in IETA transactions.

**30-18-104. Required notice or approval.** — (1) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer before engaging in a merger transaction of a type covered by this chapter shall give the notice or obtain the approval in order to be a party to an interest exchange, conversion or domestication.

(2) Property held for a charitable purpose under the law of this state by a domestic or foreign entity immediately before a transaction under this chapter becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted or devised unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order of the attorney general specifying the disposition of the property.

**History.**

I.C., § 30-18-104, as added by 2007, ch. 116, § 1, p. 333; am. 2008, ch. 36, § 3, p. 76.

**Compiler's Notes.** Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

The 2008 amendment, by ch. 36, in subsection (1), inserted "merger" and substituted "in order to be a party to an interest exchange, conversion or domestication" for "to be a party to a transaction under this chapter"; and in

subsection (2), deleted "the entity obtains the prior consent of the attorney general" following "unless" and "section 67-1401-5, Idaho Code, or" following "pursuant to," and substituted the language beginning "the law of this state concerning cy pres" for "the common law as it relates to charitable trust assets, or chapter 12, title 68, Idaho Code, or, with respect to nonprofit hospitals, the entity complies with the provisions of chapter 15, title 48, Idaho Code."

**OFFICIAL COMMENT**

1. **Section 104(a) [§ 30-18-104(1)]** — Because at least some of the provisions of this act will be new in most states, it is likely that existing state laws that require regulatory approval of transactions by businesses such as banks, insurance companies, or public utilities may not be worded in a fashion that will include at least some of the transactions authorized by this act. The purpose of subsection (a) [(1)] is to ensure that transactions under this act will be subject to the same regulatory approval as mergers. This section is based on whether a merger by a regulated entity requires prior approval because the transactions authorized by this act may be effectuated indirectly in many cases under existing law by establishing a wholly-owned subsidiary of the desired type and then merging into it.

The consequence of violating subsection (a) should be the same as in the case of a merger consummated without the required approval.

2. **Section 104(b) [§ 30-18-104(2)]** — This act applies generally to nonprofit corporations and unincorporated nonprofit associations. As

in the case of laws regulating particular industries, a state's laws governing the nondiversion of charitable property to other uses may not cover some of the transactions authorized by this act. To prevent the procedures in this act from being used to avoid restrictions on the use of property held by nonprofit entities, subsection (b) [(2)] requires approval of the effect of transactions under this act by the appropriate arm of government having supervision of nonprofit entities.

3. **Application** — An approval or order obtained under this section may impose conditions or specify the disposition of assets or liabilities in a manner different than would otherwise be the case. In such an instance, the approval or order will control over the provisions of this act specifying the effects of a transaction. See Sections 206, 306, 406, and 506 [§§ 30-18-206, 30-18-306, 30-18-406, and 30-18-506].

4. **Source** — Subsection (a) [(1)] is patterned after Model Business Corporation Act § 9.02. Subsection (b) [(2)] is patterned after 15 Pa.C.S. § 5547(b).



## IDAHO REPORTER'S COMMENT

**Section 30-18-104(2)** [see 2008 amendment] The Idaho Act is more specific than the Model Act in dealing with charitable entities. This section specifies that Idaho Code § 48-1501 *et seq.*, the Idaho “NonProfit Hospital Sale or Conversion Act,” (which requires certain non-profit hospitals to provide notice of various transactions and obtain review of those transactions and attorney general approval before any transaction affecting the non-profit hospital’s charitable trust property can be implemented), Idaho Code § 67-1401(5), (which grants to the attorney general supervisory and enforcement authority over charitable trust assets), Idaho Code § 68-1201 *et seq.*, (Private Foundations and Charitable Trusts), and the common law as it relates to charitable trust assets in general must be considered before a transaction involving such entities occurs.

**30-18-105. Status of filings.** — A filing under this chapter signed by a domestic entity becomes part of the public organic document of the entity if the entity’s organic law provides that similar filings under that law become part of the public organic document of the entity.

**History.**

I.C., § 30-18-105, as added by 2007, ch. 116, § 1, p. 333.

**Compiler’s Notes.**

Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

## OFFICIAL COMMENT

Articles of merger and other similar documents filed under the Model Business Corporation Act are made a part of the articles of incorporation of each domestic business corporation that is a party to the merger by Section 1.40(1) of the Model Business Corporation Act. This section provides that filings under this act will similarly become part of the public organic document of a domestic

corporation. It should be noted that some state statutes no longer require filed documents to be “signed” in order to facilitate electronic filing. *See, e.g.*, Colorado Rev. Stat. § 7-90-301 *et seq.* In such cases, this section should be modified to delete the reference to “signed” and merely refer to being filed (or accepted for filing).

**30-18-106. Nonexclusivity.** — The fact that a transaction under this chapter produces a certain result does not preclude the same result from being accomplished in any other manner permitted by law other than this chapter.

**History.**

I.C., § 30-18-106, as added by 2007, ch. 116, § 1, p. 333.

**Compiler’s Notes.**

Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

## OFFICIAL COMMENT

This section allows a transaction that has the same end result as one of the transactions governed by this act, but that is accomplished in a manner not within the scope of this act, to be exempt from this act. For example, a sale of assets and transfer of liabilities by two entities to a third entity followed by the

liquidation of the two transferring entities can be accomplished pursuant to sale of assets statutory provisions rather than under Article 2 [§ 30-18-201 *et seq.*] of this act, even though the end result of the transaction is essentially the same as if the two entities had merged into a third entity.

**30-18-107. Reference to external facts.** — A plan may refer to facts ascertainable outside of the plan if the manner in which the facts will operate upon the plan is specified in the plan. The facts may include the occurrence of an event or a determination or action by a person, whether or

not the event, determination, or action is within the control of a party to the transaction.

**History.**

I.C., § 30-18-107, as added by 2007, ch. 116, § 1, p. 333.

**Compiler's Notes.** Section 12 of S.L. 2007,

ch. 116, provided that the act should take effect on and after July 1, 2007.

**OFFICIAL COMMENT**

This section is based on, but more concise than, Section 1.20(k) of the Model Business Corporation Act.

**30-18-108. Alternative means of approval of transactions.** — Except as otherwise provided in the organic law or organic rules of a domestic entity, approval of a transaction under this chapter by the unanimous vote or consent of its interest holders satisfies the requirements of this chapter for approval of the transaction.

**History.**

I.C., § 30-18-108, as added by 2007, ch. 116, § 1, p. 333.

**Compiler's Notes.** Section 12 of S.L. 2007,

ch. 116, provided that the act should take effect on and after July 1, 2007.

**OFFICIAL COMMENT**

This section makes it clear that a unanimous vote by the interest holders of an entity constitutes the only approval needed of a transaction under this act. That is consistent with the default rules on approval in Sections

203 [§ 30-18-203] (approval of a merger), 303 [§ 30-18-303] (approval of an interest exchange), 403 [§ 30-18-403] (approval of a conversion), and 503 [§ 30-18-503] (approval of a domestication).

**IDAHO REPORTER'S COMMENT**

**Section 30-18-108** The Idaho Act corresponds with the Model Act in having a requirement for unanimous approval of an IETA transaction as the “default” provision. This provision does allow for less than unanimous consent by interest owners of a domestic entity if so provided in the organic rules or organic laws of the domestic entity.

**30-18-109. Appraisal rights.** — (1) An interest holder of a domestic merging, acquired, converting or domesticating entity is entitled to appraisal rights in connection with the transaction if the interest holder would have been entitled to appraisal rights under the entity’s organic law in connection with a merger in which the interest of the interest holder was changed, converted or exchanged unless:

(a) The organic law permits the organic rules to limit the availability of appraisal rights; and

(b) The organic rules provide such a limit.

(2) An interest holder of a domestic merging, acquired, converting or domesticating entity is entitled to contractual appraisal rights in connection with a transaction under this chapter to the extent provided:

(a) In the entity’s organic rules;

(b) In the plan; or

(c) In the case of a business corporation, by action of its governors.

(3) If an interest holder is entitled to contractual appraisal rights under

subsection (2) of this section and the entity's organic law does not provide procedures for the conduct of an appraisal rights proceeding, part 13, chapter 1, title 30, Idaho Code, applies to the extent practicable or as otherwise provided in the entity's organic rules or the plan.

#### History.

I.C., § 30-18-109, as added by 2007, ch. 116, § 1, p. 333; am. 2008, ch. 36, § 4, p. 76.

**Compiler's Notes.** Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

The 2008 amendment, by ch. 36, rewrote the section, which formerly read: "Appraisal rights only for shareholders of a corporation that is a party to a transaction covered by this chapter shall be governed by part 13, chapter 1, title 30, Idaho Code."

### OFFICIAL COMMENT

1. **Section 109(a) [§ 30-18-109(1)]** — If an entity's organic law permits the organic rules to limit the availability of appraisal rights, such a provision of the organic rules will apply to the availability of appraisal rights under this section. This section, however, does not authorize the organic rules to limit the availability of appraisal rights in a transaction under the act if the entity's organic law does not authorize such a provision of the organic rules.

Section 13.02(a)(1)(ii) of the Model Business Corporation Act does not provide for appraisal rights in connection with a merger for shares that remain outstanding after consummation of the merger. Appraisal rights will similarly not be available under Section 109(a) [109(1)] for shares that are not changed or converted in connection with a merger.

2. **Section 109(b) [§ 30-18-109(2)]** — This act permits a plan to set forth the terms and conditions of a transaction. A domestic entity may thus choose to grant optional appraisal rights as part of the terms of a transaction in circumstances where appraisal rights would not be available under this section. Section

109(b) [109(2)] validates the grant of such contractual appraisal rights. *Cf.* 6 Del. Code §§ 15-120 (general partnerships), 17-212 (limited partnerships), and 18-210 (limited liability companies) which validate "contractual appraisal rights"; and Model Business Corporation Act § 13.02 which permits the articles of incorporation, bylaws, or a resolution of the board of directors to confer appraisal rights in contexts in which they would otherwise not be available. Legislative authorization in subsection (b) [109(2)] of the grant of contractual appraisal rights removes any question as to whether a court would have jurisdiction to hear a case in which the parties were attempting to create jurisdiction in the court by private agreement. The procedures to be followed in a contractual appraisal rights proceeding under subsection (b) [109(2)] will be the appraisal rights procedures in the entity's organic law if that law provides such procedures. If the entity's organic law does not provide procedures for conducting an appraisal rights proceeding, subsection (c) [109(3)] makes the appraisal rights procedures in the state's business corporation law applicable unless the entity's organic rules or the plan provide otherwise.

### IDAHO REPORTER'S COMMENT

**Section 30-18-109** The Idaho Act differs from the Model Act insofar as appraisal rights are concerned. IETA preserves the pre-Act policy regarding appraisal rights with one exception. While appraisal rights for domestic corporate shareholders provided in the Idaho Business Corporations Act Parts 11 and 13 (Chapter 1, Title 30) are retained, appraisal rights are not extended to other persons. Thus, contrary to prior law, members of an LLC merging with a corporation have no appraisal rights, although the shareholders of the corporation do.

**30-18-110. Excluded entities and transactions.** — The following entities may not participate in a transaction under this chapter:

(1) Any corporation, partnership, cooperative association and entity engaged in the business of banking in the state of Idaho subject to the Idaho banking act, as provided in section 26-101, Idaho Code;

(2) Any entity subject to the Idaho credit union act, chapter 21, title 26, Idaho Code;



- (3) Any entity subject to chapters 28, 32, 34 and 48, title 41, Idaho Code;
- (4) An “insurer” as defined in section 41-103, Idaho Code;
- (5) A business and industrial development corporation (BIDCO) licensed under chapter 27, title 26, Idaho Code; and
- (6) Perpetual or endowed care cemetery, as defined in section 27-403, Idaho Code, and subject to the endowment care cemetery act of 1963, chapter 4, title 27, Idaho Code.

**History.**

I.C., § 30-18-110, as added by 2007, ch. 116,  
§ 1, p. 333.

**Compiler’s Notes.** Section 12 of S.L. 2007,

ch. 116, provided that the act should take  
effect on and after July 1, 2007.

**IDAHO REPORTER’S COMMENT**

**Section 30-18-110** The Idaho Act specifically excludes certain persons from coverage. These persons are generally those subject to regulation by the department of finance or the department of insurance and/or those charged with a public purpose or involving public interest. The Idaho Act excludes such entities because they are subject to extensive regulatory regimes with their own procedural rules.

While “insurers” as defined in the Insurance Code are excluded from the scope of IETA, other entities which may be subject to regulation by the department of insurance are not, for that reason alone, excluded.

**PART 2. MERGER**

**30-18-201. Merger authorized.** — (1) Except as otherwise provided in this section, by complying with this part:

(a) One (1) or more domestic entities may merge with one (1) or more domestic or foreign entities resulting in a domestic or foreign surviving entity; and

(b) Two (2) or more foreign entities may merge resulting in a domestic entity.

(2) Except as otherwise provided in this section, by complying with the provisions of this part applicable to foreign entities a foreign entity may be a party to a merger under this part or may be the surviving entity in such a merger if the merger is authorized by the law of the foreign entity’s jurisdiction of organization.

**History.**

I.C., § 30-18-201, as added by 2007, ch.  
116, § 1, p. 333.

**Compiler’s Notes.** Section 12 of S.L. 2007,

ch. 116, provided that the act should take  
effect on and after July 1, 2007.

**OFFICIAL COMMENT**

**1. In General** — The merger transaction authorized by this act involves the combination of one or more domestic entities with or into one or more other domestic or foreign entities. It also contemplates the consolidation of two or more foreign entities into a single domestic surviving entity. Upon the effective date of the merger, all the assets and liabilities of the constituent entities vest in the surviving entity as a matter of law. As such, mergers require the existence of at least

two separate entities before the transaction and only one entity may survive the merger. If independent existence of the constituent entities is desired following the conclusion of the transaction, a restructuring transaction other than a merger must be used to accomplish the transfer of assets and liabilities.

**2. Section 201(a) [§ 30-18-201(1)]** — Subsection (a)(1) [(1)(a)] states the general rule that subject to the rules set forth in subsections (c) [not adopted] and (d) [not adopted]

one or more domestic entities may merge with or into a domestic or foreign surviving entity. Subsection (a)(2) [(1)(b)] provides that two or more foreign entities may merge into a domestic surviving entity so long as subsection 201(b) [201(2)] is met.

**3. Section 201(b) [§ 30-18-201(2)]** — Subsection (b) [(2)] states that a foreign entity may be a party to a merger or may be the surviving entity in a merger if the merger is authorized by the laws of the foreign entity's jurisdiction of organization.

**4. Section 201(c) [not adopted]** — It is expected that many adopting states will retain provisions on mergers solely between entities of the same type in the organic law governing that type of entity and will add similar provisions to other organic laws. See the discussion in Section 3 of the Prefatory Note. On the other hand, there will be some types of entities where it is unlikely that merger provisions will be added to their organic law, for example, unincorporated non-profit associations. In cases where the organic law provides for a merger involving entities

all of the same type, the organic law and not this act applies to the transaction; but this act would apply to any merger involving entities of more than one type. In cases where the applicable organic law does not provide for mergers, this act will serve the important function of authorizing mergers involving entities of that type, as well as cross-type mergers involving entities of that type. Some states have statutes that allow cross-type mergers as well as same-type mergers, in which case the cross-type provisions should be repealed when this act is enacted. See Appendix 2 [not adopted]

**5. Section 201(d) [not adopted]** — Subsection (d) [not adopted] is an optional provision that may be used to exclude certain types of entities from the scope of this article. A provision that excludes certain types of entities from the act generally is set forth in Section 110 [§ 30-18-110].

**6. Tax Considerations** — This act authorizes a merger for state law purposes. Federal law and other state law will independently determine how a merger transaction will be taxed.

## IDAHO REPORTER'S COMMENT

**Section 30-18-201** The Idaho Act, like the Model Act, allows and provides for the merger of all covered entities. The Idaho Act makes clear that merger may result in a surviving entity or a new domestic entity. If an entirely new entity is created, applicable new organizational documents must be filed with the appropriate authorities.

While the Idaho Entity Transaction Act provides the procedural mechanism for mergers, other Idaho law should be consulted for substantive guidance. Idaho Entity Transaction Act transactions may be limited by Idaho constitutional restrictions. For example, Section 14, Article XI, Idaho Constitution, generally deals with consolidation of Idaho corporations with foreign corporations. Section 16, Article XI, Idaho Constitution, defines corporation in terms which include, in addition to corporations, other types of entities such as LLCs. This constitutional provision provides that the consolidated corporation shall not thereby become a foreign corporation and that the courts of Idaho shall retain jurisdiction over the corporate property within Idaho. This provision could conceivably affect the validity of a merger of a domestic entity into a foreign entity or redomestication of an Idaho entity to another jurisdiction — under the IETA. The Idaho drafting committee notes an 1895 federal case, *Rust v. United Waterworks Co.*, 70 F. 129 (8th Cir. 1895), which deals with a provision in the Colorado Constitution virtually identical to Section 14, Article XI, Idaho Constitution. The Eighth Circuit interpreted the provision simply to mean that the domestic corporation still retains Colorado citizenship and Colorado retains jurisdiction over the property which the domestic corporation had in the state. The court held, however, that the constitutional provision does not affect the validity of the transaction. The Idaho drafting committee also suggests that this Idaho constitutional provision may have been adopted to ensure that Idaho retains personal jurisdiction over interstate corporations, which goal has been accomplished by subsequent United States Supreme Court case law, including *International Shoe Co. v. State of Washington*, 326 U.S. 310 (1945).

**30-18-202. Plan of merger.** — (1) A domestic entity may become a party to a merger under this part by approving a plan of merger. The plan must be in a record and contain:

- (a) As to each merging entity, its name, jurisdiction of organization, and type;
- (b) If the surviving entity is to be created in the merger, a statement to that effect and its name, jurisdiction of organization, and type;



- (c) The manner of converting the interests in each party to the merger into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;
  - (d) If the surviving entity exists before the merger, any proposed amendments to its public organic document or to its private organic rules that are, or are proposed to be, in a record;
  - (e) If the surviving entity is to be created in the merger, its proposed public organic document, if any, and the full text of its private organic rules that are proposed to be in a record;
  - (f) The other terms and conditions of the merger; and
  - (g) Any other provision required by the law of a merging entity's jurisdiction of organization or the organic rules of a merging entity.
- (2) A plan of merger may contain any other provision not prohibited by law.

#### History.

I.C., § 30-18-202, as added by 2007, ch. 116, § 1, p. 333.

**Compiler's Notes.** Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

### OFFICIAL COMMENT

1. **Section 202(a) [§ 30-18-202(1)]** — The requirements for the plan of merger are set forth in Section 202(a) [202(1)]. They are similar to plan of merger provisions in corporation statutes. *See* Model Business Corporation Act § 11.02(c).

2. **Section 202(a)(1) [§ 30-18-201(1)(a)]** — Section 202(a)(1) [(1)(a)] requires that the plan of merger identify the parties to the merger. The name of a merging entity as it appears in the plan of merger will be its name in its jurisdiction of organization. *See* Comment 3 to Section 205 [§ 30-18-205].

3. **Section 202(a)(3) [§ 30-18-202(1)(c)]** — The language of Section 202(a)(3) [(1)(c)] is similar to Model Business Corporation Act § 11.02(c)(3), Uniform Partnership Act (1997) § 905(b)(5), Uniform Limited Partnership Act (2001) § 1106(b)(3), and Uniform Limited Liability Company Act § 904(b)(5). Although Section 202(a)(3) [(1)(c)] and those other provisions are all phrased in similar language, what may be done under Section 202(a)(3) [(1)(c)] with respect to providing for continuing interests in the surviving entity for some holders of interests of a class or series of a party to the merger while paying some other form of consideration to other holders of the same class or series of interests in that entity will vary depending on the type of entity involved and the extent to which its organic rules provide for non-uniform treatment of interest holders in a manner that is permissible under its organic law. Similarly the ability to use a merger to reorganize the capital structure of the surviving entity will vary depending on the type of entity involved

and whether the entity has appropriately adopted relevant provisions in its organic rules.

If the organic law and organic rules of an unincorporated entity permit a non-uniform “equity shuffle” to be accomplished in a merger involving the unincorporated entity, the minority owners of the unincorporated entity will not necessarily be entitled to the statutory appraisal right currently afforded to minority stockholders in merging corporate entities. Any perceived “unfairness” in the “shuffle” would be addressed either (i) under principles of fiduciary duties and the contractual obligations of good faith and fair dealing, assuming, of course, that such duties and obligations have not been contractually modified or eliminated to the extent permitted by the applicable organic law, or (ii) by the exercise of whatever rights the minority owners may have to veto the transaction or to withdraw or to dissociate and be paid the value of their interests.

The Model Business Corporation Act generally requires that shares of the same class or series be treated in the same manner in a merger unless the corporation has adopted an applicable provision of its articles of incorporation pursuant to section 6.01(e) of that act providing for variations in the treatment of holders of the same class or series of shares. Thus a determination of what may be done by way of an equity shuffle in the case of a corporation will require reference to its organic law and organic rules.

The consideration paid to the interest holders of the merging parties may be supplied in



whole or part by a person who is not a party to the merger.

4. **Section 202(b)** [§ 30-18-202(2)] — Section 202(b) [(2)] provides the statutory authority for a merging party to include a provision in

a plan of merger that is not specifically listed in Section 202(a) [(1)]. One such possibility is contractual appraisal rights as provided in Section 109(b) [§ 30-18-109(2)].

### IDAHO REPORTER'S COMMENT

**Section 30-18-202(1)(c)** While the Model Act commentary to this subsection refers to “fiduciary duties,” in Idaho any duties that exist within entities are those specified by the entity statutes themselves or the common law. To the extent the Model Act comment may suggest fiduciary duties otherwise exist, it is not accepted as an accurate comment on Idaho law.

**30-18-203. Approval of plan of merger.** — (1) A plan of merger is not effective unless it has been approved:

(a) By a domestic merging entity:

(i) In accordance with the requirements, if any, in its organic law and organic rules for approval of:

1. In the case of an entity that is not a business corporation, a merger; or

2. In the case of a business corporation, a merger requiring approval by a vote of the interest holders or the business corporation; or

(ii) If neither its organic law nor organic rules provide for approval of a merger described in subparagraph (i)2. of this paragraph, by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(b) In a record, by each interest holder of a domestic merging entity that will have interest holder liability for liabilities that arise after the merger becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit corporation:

(i) The organic rules of the entity provide in a record for the approval of a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and

(ii) The interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.

(2) A merger involving a foreign merging entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity’s jurisdiction of organization.

#### History.

I.C., § 30-18-203, as added by 2007, ch. 116, § 1, p. 333; am. 2008, ch. 36, § 5, p. 76.

**Compiler’s Notes.** Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

The 2008 amendment, by ch. 36, added para-

graphs (1)(a)(i)1. and (a)(i)2.; in paragraph (1)(a)(ii), inserted “described in subparagraph (i)2. of this paragraph”; in the introductory paragraph in paragraph (1)(b), added “unless, in the case of an entity that is not a business corporation or nonprofit corporation”; and added paragraphs (1)(b)(i) and (1)(b)(ii).

### OFFICIAL COMMENT

1. **Section 203(a)** [§ 30-18-203(1)] — Approval under Section 203 includes whatever

actions or procedures by the governors and interest holders of an entity are required by

its organic law, as modified by its organic rules, to effectuate the merger. If the organic rules of an entity prescribe a procedure for the proposal, adoption and/or approval of a merger, the term “approval” includes compliance with all of those rules. *See* the definition of “approval” [“approve”] in Section 102 [§ 30-18-102].

If the organic law of an entity is silent with respect to procedures for approval of a merger, the organic rules may be amended to provide those procedures. Otherwise, the default procedure in subsection (a)(1)(B) [(1)(a)(ii)] requires approval by the interest holders entitled to vote on governance matters.

The incorporation into this article of the merger procedures in the organic law of a party to a merger should be construed broadly to include not only express statutory procedures, but also applicable common law principles such as fiduciary duty standards of governors and majority interest holders. Statutory provisions on voting by classes or voting groups in a merger will also be applicable.

2. **Section 203(a)(2) [§ 30-18-203(1)(b)]**— Subsection (a)(2) [(1)(b)] is patterned in part after Uniform Limited Partnership Act (2001) § 1110. Subsection (a)(2) [(1)(b)] will be applicable, for example, to shareholders of a corporation that merges into a general partnership that is not a lim-

ited liability partnership if the shareholders become general partners of the surviving general partnership. If such a shareholder were to exercise appraisal rights, however, the shareholder would not become subject to owner liability because one effect of exercising appraisal rights is that the shareholder would not become a general partner in the surviving entity; and, in that case, the consent of that shareholder would not be required under subsection (a)(2) [(1)(b)].

The consent of an interest holder required by subsection (a)(2)(B) [(1)(b)(ii)] may be given either by (i) signing or agreeing generally to the terms of organic rules that include the required provision permitting less than unanimous approval of a merger in which interest holders become subject to owner liability, or (ii) voting for or consenting to an amendment to add such a provision.

3. **Section 203(b) [§ 30-18-203(2)]** — Where a foreign entity is a party to a merger under this act, subsection (b) [(2)] defers to the laws of the foreign jurisdiction for the requirements for approval of the merger by the foreign entity. Those laws will include the organic law of the foreign entity and other applicable laws, such as this act if it has been adopted in the foreign jurisdiction. The laws of the foreign jurisdiction will also control the application of any special approval requirements found in the organic rules of the foreign entity.

### IDAHO REPORTER'S COMMENT

**Section 30-18-203** The reader should review the Idaho comments to Section 30-18-103.

**30-18-204. Amendment or abandonment of plan of merger — Statement of abandonment.** — (1) A plan of merger of a domestic merging entity may be amended:

- (a) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or
- (b) By the governors or interest holders of the entity in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the merger is entitled to vote on or consent to any amendment of the plan that will change:
  - (i) The amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing, to be received by the interest holders of any party to the plan;
  - (ii) The public organic document or private organic rules of the surviving entity that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving entity under its organic law or organic rules; or
  - (iii) Any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(2) After a plan of merger has been approved by a domestic merging entity and before a statement of merger becomes effective, the plan may be abandoned:

- (a) As provided in the plan; or
- (b) Unless prohibited by the plan, in the same manner as the plan was approved.

(3) If a plan of merger is abandoned after a statement of merger has been filed with the secretary of state and before the filing becomes effective, a statement of abandonment, signed on behalf of a merging entity, must be filed with the secretary of state before the time the statement of merger becomes effective. The statement of abandonment takes effect upon filing, and the merger is abandoned and does not become effective. The statement of abandonment must contain:

- (a) The name of each merging or surviving entity that is a domestic entity or a qualified foreign entity;
- (b) The date on which the statement of merger was filed; and
- (c) A statement that the merger has been abandoned in accordance with this section.

**History.**

I.C., § 30-18-204, as added by 2007, ch. 116, § 1, p. 333.

**Compiler's Notes.** Section 12 of S.L. 2007,

ch. 116, provided that the act should take effect on and after July 1, 2007.

**OFFICIAL COMMENT**

This section sets out the requirements for amending or abandoning the plan of merger. They are similar to provisions for amending

or abandoning mergers found in existing corporation merger statutes. *See* Model Business Corporation Act §§ 11.02(e) and 11.08.

**30-18-205. Statement of merger — Effective date.** — (1) A statement of merger must be signed on behalf of each merging entity and filed with the secretary of state.

(2) A statement of merger must contain:

- (a) The name, jurisdiction of organization, and type of each merging entity that is not the surviving entity;
- (b) The name, jurisdiction of organization, and type of the surviving entity;
- (c) If the statement of merger is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than ninety (90) days after the date of filing;
- (d) A statement that the merger was approved by each domestic merging entity, if any, in accordance with this part and by each foreign merging entity, if any, in accordance with the law of its jurisdiction of organization;
- (e) If the surviving entity exists before the merger and is a domestic filing entity, any amendment to its public organic document approved as part of the plan of merger;
- (f) If the surviving entity is created by the merger and is a domestic filing entity, its public organic document, as an attachment;
- (g) If the surviving entity is created by the merger and is a domestic



limited liability partnership, its statement of qualification, as an attachment; and

(h) If the surviving entity is a foreign entity that is not a qualified foreign entity, a mailing address to which the secretary of state may send any process served on the secretary of state pursuant to section 30-18-206(5), Idaho Code.

(3) In addition to the requirements of subsection (2) of this section, a statement of merger may contain any other provision not prohibited by law.

(4) If the surviving entity is a domestic entity, its public organic document, if any, must satisfy the requirements of the law of this state, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic document.

(5) A plan of merger that is signed on behalf of all of the merging entities and meets all of the requirements of subsection (2) of this section may be filed with the secretary of state instead of a statement of merger and upon filing has the same effect. If a plan of merger is filed as provided in this subsection (5), references in this chapter to a statement of merger refer to the plan of merger filed under this subsection (5).

(6) A statement of merger becomes effective upon the date and time of filing or the later date and time specified in the statement of merger.

#### History.

I.C., § 30-18-205, as added by 2007, ch. 116, § 1, p. 333; am. 2008, ch. 36, § 6, p. 77.

**Compiler's Notes.** Section 12 of S.L. 2007,

ch. 116, provided that the act should take effect on and after July 1, 2007.

The 2008 amendment, by ch. 36, added paragraph (2)(h).

### OFFICIAL COMMENT

1. The requirements for the statement of merger are similar to articles of merger provisions found in most existing corporate merger statutes. *See* Model Business Corporation Act § 11.06.

2. **Section 205(a) [§ 30-18-205(1)]** — The filing of a statement of merger makes the transaction a matter of public record. A separate public filing under the merger provisions of the organic law of a domestic merging entity is not required. Optional provisions dealing with the filing requirements and filing fee for a statement of merger are set forth in Appendix 1 [not adopted].

3. **Section 205(b)(1) and (2) [§ 30-18-205(2)(a) and (b)]** — The names of foreign entities set forth in the statement of merger will generally be their names in their jurisdiction of formation, except that if a foreign entity has been required to adopt a different name in order to qualify to do business in the adopting state, the foreign qualification statute will likely require that the name of the entity as set forth in the statement of merger be the name adopted for purposes of qualifying to do business.

4. **Section 205(b)(3) [§ 30-18-205(2)(c)]** — *See* Comment 9.

5. **Section 205(b)(4) [§ 30-18-205(2)(d)]** — The statement in subsection (b)(4) [(2)(d)] that the plan of merger was approved by each entity in accordance with this article necessarily presupposes that the plan was approved in accordance with any valid, special requirements in the organic rules of each merging entity.

6. **Section 205(b)(6) [§ 30-18-205(2)(f)]** — The public organic document of a domestic surviving entity created by the merger that is attached to the statement of merger becomes the original, officially filed text of the public organic document of the surviving entity when the statement of merger takes effect. It is not necessary, or appropriate, to make any other filing to create the surviving entity.

Similarly, a statement of qualification for a domestic limited liability partnership created by the merger that is attached to the statement of merger does not need to be filed separately.

7. **Section 205(d) [§ 30-18-205(4)]** — Organic laws typically require an initial filing that creates an entity to be signed by the person serving as the incorporator or other organizer. Subsection (d) [(4)], however, provides that the public organic document of the

surviving entity does not need to be signed since it is itself attached to a signed document.

Subsection (d) [(4)] also permits the public organic document of the surviving entity to omit any provision that is not required to be included in a restatement of the public organic document. Pursuant to this provision, for example, the public organic document of a business corporation created as the surviving entity in the merger would not need to state the name and address of each incorporator even though that information would be required by Section 2.02(a)(4) of the Model Business Corporation Act if the corporation were being incorporated outside the context of the merger.

8. **Section 205(e) [§ 30-18-205(5)]** — A plan of merger that contains all the information required in the statement of merger may be filed instead of the statement of merger. The plan must be in a record and signed by each merging party.

9. **Section 205(f) [§ 30-18-205(6)]** — The effective time of the statement is the effective time of its filing, unless otherwise specified. A statement may specify a delayed effective time and date, and if it does so the statement becomes effective at the time and date specified. Section 205(f) [(6)] is subject to the 90-day delayed effective date filing limitation in subsection 205(b)(3) [(2)(c)].

### IDAHO REPORTER'S COMMENT

**Section 30-18-205(4)** Other than the few exceptions specified in this section and Section 203 [§ 30-18-203], the public organic document of an entity must comply with all existing statutory and regulatory requirements. For example, Idaho requires identification of the statutory agent and governors for various entities.

#### **30-18-206. Effect of merger.** — (1) When a merger becomes effective:

- (a) The surviving entity continues or comes into existence;
- (b) Each merging entity that is not the surviving entity ceases to exist;
- (c) All property of each merging entity vests in the surviving entity without transfer, conveyance, assignment, reversion, or impairment;
- (d) All liabilities of each merging entity are liabilities of the surviving entity;
- (e) Except as otherwise provided by law other than this chapter or the plan of merger, all of the rights, privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;
- (f) If the surviving entity exists before the merger:
  - (i) All of its property continues to be vested in it without reversion or impairment;
  - (ii) It remains subject to all of its liabilities; and
  - (iii) All of its rights, privileges, immunities, powers, and purposes continue to be vested in it;
- (g) The name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding;
- (h) If the surviving entity exists before the merger:
  - (i) Its public organic document, if any, is amended as provided in the statement of merger and is binding on its interest holders; and
  - (ii) Its private organic rules that are to be in a record, if any, are amended to the extent provided in the plan of merger and are binding on and enforceable by:
    - 1. Its interest holders; and
    - 2. In the case of a surviving entity that is not a business corporation or a nonprofit corporation, any other person that is a party to an agreement that is part of the surviving entity's private organic rules;

- (i) If the surviving entity is created by the merger:
  - (i) Its public organic document, if any, is effective and is binding on its interest holders; and
  - (ii) Its private organic rules are effective and are binding on and enforceable by:
    - 1. Its interest holders; and
    - 2. In the case of a surviving entity that is not a business corporation or a nonprofit corporation, any other person that was a party to an agreement that was part of the organic rules of a merging entity if that person has agreed to be a party to an agreement that is part of the surviving entity's private organic rules; and
- (j) The interests in each merging entity that are to be converted in the merger are converted, and the interest holders of those interests are entitled only to the rights provided to them under the plan of merger and to any appraisal rights they have under section 30-18-109, Idaho Code, and the merging entity's organic law.
- (2) Except as otherwise provided in the organic law or organic rules of a merging entity, the merger does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding-up of the merging entity.
- (3) When a merger becomes effective, a person that did not have interest holder liability with respect to any of the merging entities and that becomes subject to interest holder liability with respect to a domestic entity as a result of a merger has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the merger becomes effective.
- (4) When a merger becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic merging entity with respect to which the person had interest holder liability is as follows:
  - (a) The merger does not discharge any interest holder liability under the organic law of the domestic merging entity to the extent the interest holder liability arose before the merger became effective;
  - (b) The person does not have interest holder liability under the organic law of the domestic merging entity for any liability that arises after the merger becomes effective;
  - (c) The organic law of the domestic merging entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (a) of this subsection as if the merger had not occurred and the surviving entity was the domestic merging entity; and
  - (d) The person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of the domestic merging entity with respect to any interest holder liability preserved under paragraph (a) of this subsection as if the merger had not occurred.
- (5) When a merger becomes effective, a foreign entity that is the surviving entity:
  - (a) May be served with process in this state for the collection and enforcement of any liabilities of a domestic merging entity; and
  - (b) Appoints the secretary of state as its agent for service of process for collecting or enforcing those liabilities.



(6) When a merger becomes effective, the certificate of authority or other foreign qualification of any foreign merging entity that is not the surviving entity is canceled.

#### History.

I.C., § 30-18-206, as added by 2007, ch. 116, § 1, p. 333; am. 2008, ch. 36, § 7, p. 78.

**Compiler's Notes.** Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

The 2008 amendment, by ch. 36, in paragraph (1)(h)(i), substituted "is binding" for "remains binding"; in paragraph (1)(h)(ii), substituted "and are binding on and enforceable by" for "and remain binding on"; added

the paragraph (1)(h)(ii)1. designation and paragraph (1)(h)(ii)2.; in paragraph (1)(i)(i), added "is effective and is binding on its interest holders"; in paragraph (1)(i)(ii), substituted "are binding on and enforceable by: 1. Its interest holders; and" for "are binding upon the interest holders of the surviving entity"; added paragraph (1)(i)(ii)2.; and in paragraph (1)(j), added "and the merging entity's organic law."

### OFFICIAL COMMENT

**1. In General** — With the exception of subsections (c) and (d) [(3) and (4)], this section closely tracks existing corporate statutory provisions on the effect of a corporate-to-corporate merger. See Model Business Corporation Act § 11.07.

Subsections (c) and (d) [(3) and (4)] set forth rules for two circumstances that typically do not exist in a merger where all the entities involved are corporations. Subsection (c) [(3)] deals with the situation where an interest holder that does not have vicarious liability for the obligations of a merging entity before the merger has interest holder liability after the merger. An example would be a corporate shareholder who agrees to be the general partner in a general partnership that is the surviving entity in a merger between a corporation and a general partnership that is not a limited liability partnership. Subsection (d) [(4)] deals with the situation where an interest holder has vicarious liability for the obligations of one of the merging parties before the merger but ceases to have any interest holder liability for the obligations of the surviving entity after the merger is effective. An example would be a general partner in a general partnership that merges into a corporation.

The effects of subsections (c) and (d) [(3) and (4)] will depend to a certain extent on how a contractual liability is worded. For example, a lease that provides that the entire rent is due when the lease is signed, but provides that rent may be paid in future installments, will be treated differently from a lease that does not provide that the entire rent is earned upon signing.

Under Section 203(a)(2) [§ 30-18-203(1)(b)], a merger cannot have the effect of making an interest holder of a domestic merging entity subject to interest holder liability for the obligations or liabilities of any other person or entity unless the interest holder has

executed a separate written consent to become subject to such liability or previously agreed to the effectuation of a transaction having that effect without the interest holder's consent.

See also Comments 6 and 7.

**2. Section 206(a) [§ 30-18-206(1)]** — Subsection (a) [(1)] states the general understanding that in a merger the assets and liabilities of the merging entities automatically vest in the surviving entity. The surviving entity becomes the owner of all real and personal property of the merged entities and is subject to all debts, obligations, and liabilities of the merging entities. A merger does not constitute a transfer, assignment, or conveyance of any property held by the merging entities prior to the merger. A merger also does not give rise to a claim that a contract with a merging entity is no longer in effect on the ground of nonassignability, unless the contract specifically provides that it does not survive a merger. The contract rights that are vested in the surviving entity include the right to enforce subscription agreements for interests and obligations to make capital contributions entered into or incurred before the merger.

After a merger becomes effective, the law of the surviving entity's jurisdiction of organization governs the surviving entity.

See Sections 103(b) [§ 30-18-103(2)] and 104(b) [§ 30-18-104(2)] which modify the provisions of this section with respect to the effects of a merger to the extent a regulatory law provides otherwise or any of the parties holds property committed to charitable purposes.

**3. Section 206(a)(7) [§ 30-18-206(1)(g)]** — All pending proceedings involving either the survivor or a party whose separate existence ceased as a result of the merger are continued. Under subsection (a)(7) [(1)(g)], the name of the survivor may be, but need not

be, substituted in any pending proceeding for the name of a party to the merger whose separate existence ceased as a result of the merger. The substitution may be made whether the survivor is a complainant or a respondent, and may be made at the instance of either the survivor or an opposing party. Such a substitution has no substantive effect, because whether or not the survivor's name is substituted, the survivor succeeds to the claims, and is subject to the liabilities, of any party to the merger whose separate existence ceased as a result of the merger.

4. **Section 206(a)(8) [§ 30-18-206(1)(h)]** — The private organic rules of an unincorporated entity typically may be either oral or written. The plan of merger is not required to set forth amendments to oral provisions of the private organic rules of the surviving entity, and thus subsection (a)(8)(B) [(1)(h)(ii)] is limited in scope just to amendments to the private organic rules that are to be in a record, if any.

5. **Section 206(a)(10)** — The bracketed language in this subsection should only be included if the enacting state adopts Section 109.

6. **Section 206(c) [§ 30-18-206(3)]** — Subsection (c) [(3)] sets forth the general rule that an interest holder that was not liable for the liabilities of a merging entity before the merger but will have personal liability for the obligations of the surviving entity after the merger will be personally liable only for the liabilities of a domestic surviving entity that arise after the effective date of a merger. When a liability arises will be determined by

other applicable law. The concept of “liabilities [‘liability’]” is defined very expansively in Section 102 [§ 30-18-102].

7. **Section 206(d) [§ 30-18-206(4)]** — Subsection (d) [(4)] provides four rules with respect to a person who ceases to have interest holder liability after the effective date of the merger:

(1) the interest holder remains personally liable for any obligations that were incurred before the effective date of the merger;

(2) the interest holder does not have any personal liability for obligations of the surviving entity;

(3) the pre-existing personal liability of the interest holder is enforced against the interest holder on the same basis as if the merger had not taken place; and

(4) the interest holder has the same rights of contribution from other interest holders of the merging entity as the interest holder would have had if the merger had not occurred.

8. **Section 206(e) [§ 30-18-206(5)]** — When a merger becomes effective, a foreign entity that is the surviving entity is deemed to appoint the secretary of state as its agent for service of process. The proceedings covered by subsection (e) [(5)] include a proceeding to enforce the rights of any interest holders of each domestic merging entity who are entitled to and exercise appraisal rights. One of the liabilities that a foreign surviving entity succeeds to is the obligation of a merging entity to pay the amount, if any, to which its interest holders who assert appraisal rights are entitled.

### IDAHO REPORTER'S COMMENT

**Section 30-18-206(1)(d)** This subsection is in accord with Section 15, Article XI, Idaho Constitution, because the surviving entity after a merger under the IETA, by law, assumes all liabilities of the merging entities.

### PART 3. INTEREST EXCHANGE

**30-18-301. Interest exchange authorized.** — (1) Except as otherwise provided in this section, by complying with this part:

(a) A domestic entity may acquire all of one (1) or more classes or series of interests of another domestic or foreign entity in exchange for interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing; or

(b) All of one (1) or more classes or series of interests of a domestic entity may be acquired by another domestic or foreign entity in exchange for interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing.

(2) Except as otherwise provided in this section, by complying with the provisions of this part applicable to foreign entities a foreign entity may be



the acquiring or acquired entity in an interest exchange under this part if the interest exchange is authorized by the law of the foreign entity's jurisdiction of organization.

(3) If a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to an interest exchange, the provision applies to an interest exchange in which the domestic entity is the acquired entity as if the interest exchange were a merger until the provision is amended after the effective date of this chapter.

#### History.

I.C., § 30-18-301, as added by 2007, ch. 116, § 1, p. 333.

**Compiler's Notes.** The words "the effective date of this chapter", referred to in sub-

section (3), mean July 1, 2007, the effective date of S.L. 2007, Chapter 116.

Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

### OFFICIAL COMMENT

**1. In General** — An interest exchange is the same type of transaction as the share exchange provided for in Section 11.03 of the Model Business Corporation Act ("MBCA"). The effect of an interest exchange is that: (1) the separate existence of the acquired entity is not affected; and (2) the acquiring entity acquires all of the interests of one or more classes of the acquired entity. An interest exchange also allows an indirect acquisition through the use of consideration in the exchange that is not provided by the acquiring entity (*e.g.*, consideration from another or related entity).

Neither share exchanges nor interest exchanges are universally recognized in either corporation or unincorporated entity laws. Where there is no existing interest exchange statutory authority, a triangular merger in which the acquiring entity forms a new subsidiary and the acquired entity is then merged into the new subsidiary produces the same result. Article 3 allows the interest exchange to be accomplished directly in a single step, rather than indirectly through the triangular merger route.

The "classes or series" referenced in Section 301(a) [(1)] are commonly found in corporation law. *See, e.g.*, MBCA § 6.02. Specific provisions authorizing classes and series are less common in unincorporated entity law. *But see* 6 Del. Code §§ 15-407 (general partnerships), 17-208 (limited partnerships), and 18-215 (limited liability companies).

**2. Section 301(a) [§ 30-18-301(1)]** — The acquiring entity is not required to acquire all of the interests in the exchanging entity. For example, assume that an LLC with three classes of membership interests enters into an interest exchange with another entity. The acquiring entity need only acquire all of the ownership interests of one or more classes of the LLC membership interests.

**3. Section 301(b) [§ 30-18-301(2)]** — Subsection (b) [(2)] allows a foreign entity to effectuate an interest exchange with a domestic entity if the interest exchange is authorized by the organic law of the foreign entity.

**4. Section 301(c) [§ 30-18-301(3)]** — This subsection deals with rights of parties to protected agreements (defined in Section 102(31) [§ 30-18-102(31)]) when an interest exchange takes place. Because the concept of an interest exchange is relatively new, a person contracting with an entity or loaning it money who drafted and negotiated special rights relating to the transaction before the enactment of this article should not be charged with the consequences of not having dealt with the concept of an interest exchange in the context of those special rights. Subsection (c) [(3)] accordingly provides a transitional rule that is intended to protect such special rights as to third parties. If, for example, an entity is a party to a contract that provides that the entity cannot participate in a merger without the consent of the other party to the contract, the requirement to obtain the consent of the other party will also apply to an interest exchange in which the entity is the exchanging entity. If the entity fails to obtain the consent, the result will be that the other party will have the same rights it would have had if the entity were to participate in a merger without the required consent.

The transitional rule in subsection (c) [(3)] ceases to make sense at such time as the provisions of the agreement giving rise to the special rights is first amended after the effective date of this article because at that time the provision may be amended to address expressly an interest exchange. The transitional rule will continue to apply, however, if a provision other than the specific provisions giving rise to the special rights is amended.



5. **Section 301(d) [not adopted]** — The statutes that should be listed in Section 301(c) [§ 30-18-301(3)] are interest exchange statutes that already exist or are added to the state's various entity statutes when META is adopted. *See also*, the Legislative Note above.

6. **Section 301(e) [not adopted]**— Sub-

section (e) is an optional provision that may be used to exclude certain types of entities from the scope of this article. A provision that excludes certain types of entities from the act generally is set forth in Section 110 [§ 30-18-110].

**30-18-302. Plan of interest exchange.** — (1) A domestic entity may be the acquired entity in an interest exchange under this part by approving a plan of interest exchange. The plan must be in a record and contain:

- (a) The name and type of the acquired entity;
- (b) The name, jurisdiction of organization, and type of the acquiring entity;
- (c) The manner of converting the interests in the acquired entity into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;
- (d) Any proposed amendments to the public organic document or private organic rules that are, or are proposed to be, in a record of the acquired entity;
- (e) The other terms and conditions of the interest exchange; and
- (f) Any other provision required by the law of this state or the organic rules of the acquired entity.

(2) A plan of interest exchange may contain any other provision not prohibited by law.

**History.**

I.C., § 30-18-302, as added by 2007, ch. 116, § 1, p. 333.

**Compiler's Notes.** Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

**OFFICIAL COMMENT**

1. **General** — This section sets forth the requirements for the plan of interest exchange, which must be approved by the acquired entity in accordance with Section 303 [§ 30-18-303]. The content of the plan of interest exchange is similar to the content of a plan of merger. *See* Section 202 [§ 30-18-202]. Subsection (a) [(1)] lists the mandatory provisions that must be in the plan. Subsection (b) [(2)] authorizes the plan to contain any other provision the parties wish to include, unless the provision is prohibited by law.

2. **Section 302(a)(3) [§ 30-18-302(1)(c)]** — Under this subsection, interest holders in the acquired entity may receive interests or

securities of the acquiring entity or of a party other than the acquiring entity, obligations, rights to acquire interests or securities, cash, or other property. *See also* Comment 3 to Section 202 [§ 30-18-202].

3. **Filing the Plan of Interest Exchange** — The plan of interest exchange may, but need not, be filed instead of the statement of interest exchange (Section 305 [§ 30-18-305]) so long as it contains all the information required to be in the statement and is delivered to the Secretary of State for filing after the plan has been adopted and approved. *See* Section 305(d) [§ 30-18-305(4)].

**30-18-303. Approval of plan of interest exchange.** — (1) A plan of interest exchange is not effective unless it has been approved:

- (a) By a domestic acquired entity:
  - (i) In accordance with the requirements, if any, in its organic law and organic rules for approval of an interest exchange;
  - (ii) Except as otherwise provided in subsection (4) of this section, if neither its organic law nor organic rules provide for approval of an

interest exchange, in accordance with the requirements, if any, in its organic law and organic rules for approval of:

1. In the case of an entity that is not a business corporation, a merger, as if the interest exchange were a merger; or
2. In the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation, as if the interest exchange were that type of merger; or
- (iii) If neither its organic law nor organic rules provide for approval of an interest exchange or a merger described in subparagraph (ii)2. of this paragraph, by all of the interest holders of the entity entitled to vote on or consent to any matter; and
- (b) In a record, by each interest holder of a domestic acquired entity that will have interest holder liability for liabilities that arise after the interest exchange becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit corporation:
  - (i) The organic rules of the entity provide in a record for the approval of an interest exchange or a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and
  - (ii) The interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.
- (2) An interest exchange involving a foreign acquired entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.
- (3) Except as otherwise provided in its organic law or organic rules, the interest holders of the acquiring entity are not required to approve the interest exchange.
- (4) A provision of the organic law of a domestic acquired entity that would permit a merger between the acquired entity and the acquiring entity to be approved without the vote or consent of the interest holders of the acquired entity because of the percentage of interests in the acquired entity held by the acquiring entity does not apply to approval of an interest exchange under subsection (1)(a)(ii) of this section.

#### History.

I.C., § 30-18-303, as added by 2007, ch. 116, § 1, p. 333; am. 2008, ch. 36, § 8, p. 80.

**Compiler's Notes.** Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

The 2008 amendment, by ch. 36, in paragraph (1)(a)(i), inserted "organic law and";

added paragraphs (1)(a)(ii)1. and (a)(ii)2.; in paragraph (1)(a)(iii), inserted "described in subparagraph (ii)2. of this paragraph"; in the introductory paragraph in paragraph (1)(b), added "unless, in the case of an entity that is not a business corporation or nonprofit corporation"; and added paragraphs (1)(b)(i) and (1)(b)(ii).

#### OFFICIAL COMMENT

**1. In General** — This section sets forth the required approval (defined in Section 102(3)) [§ 30-18-102(3)] of an interest exchange. An interest exchange transaction governed by this article only requires approval by the acquired entity, unless the applicable organic

law or the organic rules of the acquiring entity otherwise provide (*see* subsection (c) [(3)]), a condition that rarely exists.

If the acquired entity is a domestic entity, one of three possibilities will be applicable:

- (1) if the organic law (*see* Section 102(26)

[§ 30-18-102(26)] governing the acquired domestic entity has specific provisions for approval of an interest exchange, or even if there are no such provisions, the organic rules (see Section 102(27) [§ 30-18-102(27)]) of the acquired entity have specific provisions for approval of an interest exchange, then the approval provisions in the organic law or organic rules apply;

(2) if there are no specific provisions for approval of an interest exchange in the acquired entity's organic law or organic rules but either the organic law governing the acquired entity or the acquired entity's organic rules contain provisions for approval of mergers, then those merger provisions (except for any short form merger provisions that allow approval of a merger by the acquired entity without a vote of its interest holders — see subsection (d) [(4)]) apply; and

(3) if neither (1) or (2) are applicable, then unanimous consent of the acquired entity's interest holders will be required.

A three-tiered approval scheme is necessary because specific provisions for interest exchanges do not exist in many state corporate and unincorporated entity statutes or in the various types of entity organic rules. See Comment 4 to Section 301 [§ 30-18-301].

If the acquired entity is a foreign entity, then approval is in accordance with the laws of the acquired entity's jurisdiction of organization. See subsection (b) [2]. See also Comment 3 to Section 203 [§ 30-18-203].

2. **Section 303(a)(2) [§ 30-18-303(1)(b)]** — See Comment 2 to Section 203 [§ 30-18-203] for an explanation of this interest holder liability provision.

3. **Section 303(d) [§ 30-18-303(4)]** — Section 303(d) [303(4)] is an exception to the general approach followed in this section of looking to the underlying rules on approval of mergers. Many business corporation laws permit a corporation that owns a specified percentage of the shares of another corporation (typically 80 or 90%) to merge with the subsidiary corporation without a vote of the subsidiary's shareholders. Section 303(d) [303(4)] makes clear that those "short form" merger rules do not apply and a vote of the interest holders of a subsidiary is always required to approve an interest exchange under Article 3 [Part 3]. A provision similar to Section 303(d) [303(4)] has not been included in Article 4 or 5 [Parts 4 or 5] because the conversion and domestication transactions under those chapters only involve a single entity rather than two entities as in the case of a short form merger.

### IDAHO REPORTER'S COMMENT

**Section 30-18-303** The reader should review the Idaho comment to Section 30-18-103.

**30-18-304. Amendment or abandonment of plan of interest exchange — Statement of abandonment.** — (1) A plan of interest exchange of a domestic acquired entity may be amended:

(a) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(b) By the governors or interest holders of the entity in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the interest exchange is entitled to vote on or consent to any amendment of the plan that will change:

(i) The amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing, to be received by any of the interest holders of the acquired entity under the plan;

(ii) The public organic document or private organic rules of the acquired entity that will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the interest holders of the acquired entity under its organic law or organic rules; or

(iii) Any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(2) After a plan of interest exchange has been approved by a domestic



acquired entity and before a statement of interest exchange becomes effective, the plan may be abandoned:

- (a) As provided in the plan; or
- (b) Unless prohibited by the plan, in the same manner as the plan was approved.

(3) If a plan of interest exchange is abandoned after a statement of interest exchange has been filed with the secretary of state and before the filing becomes effective, a statement of abandonment, signed on behalf of the acquired entity, must be filed with the secretary of state before the time the statement of interest exchange becomes effective. The statement of abandonment takes effect upon filing, and the interest exchange is abandoned and does not become effective. The statement of abandonment must contain:

- (a) The name of the acquired entity;
- (b) The date on which the statement of interest exchange was filed; and
- (c) A statement that the interest exchange has been abandoned in accordance with this section.

<p><b>History.</b> I.C., § 30-18-304, as added by 2007, ch. 116, § 1, p. 333.</p>	<p><b>Compiler's Notes.</b> Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.</p>
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**OFFICIAL COMMENT**

This section parallels analogous provisions in Articles [Parts] 2 (mergers), 4 (conversions), and 5 (domestications).

**30-18-305. Statement of interest exchange — Effective date. —**

(1) A statement of interest exchange must be signed on behalf of a domestic acquired entity and filed with the secretary of state.

- (2) A statement of interest exchange must contain:
  - (a) The name and type of the acquired entity;
  - (b) The name, jurisdiction of organization, and type of the acquiring entity;
  - (c) If the statement of interest exchange is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than ninety (90) days after the date of filing;
  - (d) A statement that the plan of interest exchange was approved by the acquired entity in accordance with this part; and
  - (e) Any amendments to the acquired entity's public organic document approved as part of the plan of interest exchange.

(3) In addition to the requirements of subsection (2) of this section, a statement of interest exchange may contain any other provision not prohibited by law.

(4) A plan of interest exchange that is signed on behalf of a domestic acquired entity and meets all of the requirements of subsection (2) of this section may be filed with the secretary of state instead of a statement of interest exchange and upon filing has the same effect. If the plan of interest exchange is filed as provided in this subsection (4), references in this chapter

to a statement of interest exchange refer to the plan of interest exchange filed under this subsection (4).

(5) A statement of interest exchange becomes effective upon the date and time of filing or the later date and time specified in the statement of interest exchange.

**History.**

I.C., § 30-18-305, as added by 2007, ch. 116, § 1, p. 333.

**Compiler's Notes.**

Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

**OFFICIAL COMMENT**

1. **In General** — The filing of a statement of interest exchange makes the transaction a matter of public record. A separate public filing under the organic law of the exchanging entity is not required. The mandatory requirements for a statement of interest exchange are set forth in subsection (b) [(2)]. They are essentially the same as the requirements for a statement of merger in Section 205 [§ 30-18-205].

2. **Section 305(b)(3) and (e) [§ 30-18-305(2)(c) and (d)]** — The effective date and

time of a statement of interest exchange are the date and time of its filing, unless otherwise specified. If a delayed effective date is specified, the statement is effective on that date and time, subject to the 90 day maximum delayed effective date in Section 305(b)(3) [(2)(c)].

3. **Section 305(d) [§ 30-18-305(4)]** — A plan of interest exchange can be used as a substitute for the statement of interest exchange so long as the plan satisfies the requirements in subsection (d) [(4)].

**IDAHO REPORTER'S COMMENT**

**Section 30-18-305(4)** Other than the few exceptions specified in this section and Section 303 [§ 30-18-303], the public organic document of an entity must comply with all existing statutory and regulatory requirements. For example, Idaho requires identification of the statutory agent and governors for various entities.

**30-18-306. Effect of interest exchange.** — (1) When an interest exchange becomes effective:

(a) The interests in the acquired entity that are the subject of the interest exchange cease to exist or are converted or exchanged, and the interest holders of those interests are entitled only to the rights provided to them under the plan of interest exchange and to any appraisal rights they have under section 30-18-109, Idaho Code, and the acquired entity's organic law;

(b) The acquiring entity becomes the interest holder of the interests in the acquired entity stated in the plan of interest exchange to be acquired by the acquiring entity;

(c) The public organic document, if any, of the acquired entity is amended as provided in the statement of interest exchange and is binding on its interest holders; and

(d) The private organic rules of the acquired entity that are to be in a record, if any, are amended to the extent provided in the plan of interest exchange and are binding on and enforceable by:

(i) Its interest holders; and

(ii) In the case of an acquired entity that is not a business corporation or nonprofit corporation, any other person that is a party to an agreement that is part of the acquired entity's private organic rules.

(2) Except as otherwise provided in the organic law or organic rules of the acquired entity, the interest exchange does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding-up of the acquired entity.

(3) When an interest exchange becomes effective, a person that did not have interest holder liability with respect to the acquired entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of the interest exchange has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the interest exchange becomes effective.

(4) When an interest exchange becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic acquired entity with respect to which the person had interest holder liability is as follows:

- (a) The interest exchange does not discharge any interest holder liability under the organic law of the domestic acquired entity to the extent the interest holder liability arose before the interest exchange became effective;
- (b) The person does not have interest holder liability under the organic law of the domestic acquired entity for any liability that arises after the interest exchange becomes effective;
- (c) The organic law of the domestic acquired entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (a) of this subsection as if the interest exchange had not occurred; and
- (d) The person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of the domestic acquired entity with respect to any interest holder liability preserved under paragraph (a) of this subsection as if the interest exchange had not occurred.

#### **History.**

I.C., § 30-18-306, as added by 2007, ch. 116, § 1, p. 333; am. 2008, ch. 36, § 9, p. 81.

**Compiler's Notes.** Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

The 2008 amendment, by ch. 36, in para-

graph (1)(a), added "and the acquired entity's organic law"; in paragraph (1)(c), substituted "is binding" for "remains binding"; in paragraph (1)(d), substituted "and are binding on and enforceable by" for "and remain binding on"; and added the paragraph (1)(d)(i) designation and the text of paragraph (1)(d)(ii).

### **OFFICIAL COMMENT**

1. **Section 306(a) [§ 30-18-306(1)]** — In contrast to a merger, an interest exchange does not in and of itself affect the separate existence of the parties, vest in the acquiring entity the assets of the acquired entity, or render the acquiring entity liable for the liabilities of the acquired entity. Thus, subsection (a) [(1)] is significantly simpler than Section 206(a) [§ 30-18-206(1)] with respect to the effects of a merger.

When an interest exchange becomes effective: (1) the interests of the acquired entity

are exchanged, converted or canceled as provided in the plan; (2) the only rights of the former interest holders of the acquired entity whose interests are affected by the interest exchange are those rights related to the exchange, conversion or cancellation; (3) the acquiring entity becomes the owner of the acquired entity's interests as provided in the plan; and (4) the organic rules of the acquired entity are amended as provided in the statement of interest exchange, thus obviating the need for repetitive filings (i.e., a filing as to



the entity interest exchange and another filing to reflect amendments to public organic documents as required by the laws governing the acquired entity).

2. **Section 306(c) [§ 30-18-306(3)]** — Subsection (c) [(3)] provides the rule for future interest holder liability and parallels analogous provisions in Articles [Parts] 2 (mergers), 4 (conversions), and 5 (domestications).

*See* Comment 6 to Section 206 [§ 30-18-206].

3. **Section 306(d) [§ 30-18-306(4)]** — Subsection (d) [(4)] provides the rule for past interest holder liability and parallels analogous provisions in Articles [Parts] 2 (mergers), 4 (conversions), and 5 (domestications). *See* Comment 7 to Section 206 [§ 30-18-206].

## PART 4. CONVERSION

**30-18-401. Conversion authorized.** — (1) Except as otherwise provided in this section, by complying with this part, a domestic entity may become:

- (a) A domestic entity of a different type; or
- (b) A foreign entity of a different type, if the conversion is authorized by the law of the foreign jurisdiction.

(2) Except as otherwise provided in this section, by complying with the provisions of this part applicable to foreign entities a foreign entity may become a domestic entity of a different type if the conversion is authorized by the law of the foreign entity's jurisdiction of organization.

(3) If a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to a conversion, the provision applies to a conversion of the entity as if the conversion were a merger until the provision is amended after the effective date of this chapter.

### History.

I.C., § 30-18-401, as added by 2007, ch. 116, § 1, p. 333.

**Compiler's Notes.** Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

## OFFICIAL COMMENT

1. **In General** — The procedure in this article permits an entity to change to a different type of entity. A transaction in which an entity changes its jurisdiction of organization but does not change its type is a domestication transaction and is the subject of Article [Part] 5.

2. **Conversion of a Foreign Entity into a Domestic Entity** — Subsection (b) [(2)] allows a foreign entity to effectuate a conversion into a domestic entity only if the conversion is permitted by the laws of the foreign entity's jurisdiction of organization. *See* Section 102(21) [§ 30-18-102(21)] for the definition of "jurisdiction of organization." When a foreign entity becomes a domestic entity pursuant to this article, the effect of the conversion will be as provided in Section 406 [§ 30-18-406]. The procedures by which the conversion is approved, however, will be de-

termined by the laws of the foreign entity's jurisdiction of organization.

3. **Conversion of a Domestic Entity into a Foreign Entity** — Under subsection (a)(2) [(1)(b)] this type of conversion must be authorized by the law of the foreign jurisdiction. If this is not the case, it may be possible to achieve the same result by forming an entity of the type desired in the foreign jurisdiction and then merging the domestic entity into the new foreign entity under Article [Part] 2.

4. **Section 401(c) [§ 30-18-401(3)]** — *See* Comment 4 to Section 301 [§ 30-18-301].

5. **Section 401(d) [§ 30-18-401(4)]** — Subsection (d) [(4)] is an optional provision that may be used to exclude certain types of entities from the scope of this article. A provision that excludes certain types of entities from the act generally is set forth in Section 110 [§ 30-18-110].

**30-18-402. Plan of conversion.** — (1) A domestic entity may convert to a different type of entity under this part by approving a plan of conversion. The plan must be in a record and contain:

- (a) The name and type of the converting entity;
  - (b) The name, jurisdiction of organization, and type of the converted entity;
  - (c) The manner of converting the interests in the converting entity into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;
  - (d) The proposed public organic document of the converted entity if it will be a filing entity;
  - (e) The full text of the private organic rules of the converted entity that are proposed to be in a record;
  - (f) The other terms and conditions of the conversion; and
  - (g) Any other provision required by the law of this state or the organic rules of the converting entity.
- (2) A plan of conversion may contain any other provision not prohibited by law.

**History.**

I.C., § 30-18-402, as added by 2007, ch. 116, § 1, p. 333.

**Compiler's Notes.**

Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

**OFFICIAL COMMENT**

**1. In General** — This section sets forth the requirements for the plan of conversion, which must be approved by the converting entity in accordance with Section 403 [§ 30-18-403]. The content of a plan of conversion is similar to the content of a plan of merger. *See* Section 202 [§ 30-18-202]. Subsection (a) [(1)] lists the mandatory provisions that must be in the plan. Subsection (b) [(2)] authorizes the plan to contain any other provision the parties wish to include, unless the provision is prohibited by law.

**2. Section 402(a)(3) [§ 30-18-402(1)(c)]** — Interest holders in the converting entity may receive interests or other securities of the converted entity or of any other person, obli-

gations, rights to acquire interests or other securities, cash, or other property. *See also* Sections 202(a)(3) [§ 30-18-202(1)(c)], 302(a)(3) [§ 30-18-302(1)(c)] (interest exchange), and 503(a)(3) [§ 30-18-503(1)(c)] (domestication).

**3. Filing the Plan of Conversion** — The plan of conversion may, but need not, be filed instead of the statement of conversion (Section 405 [§ 30-18-405]), so long as it contains all of the information required to be in the statement of conversion and is delivered to the Secretary of State for filing after the plan has been adopted and approved. *See* Section 405(e) [§ 30-18-405(5)].

**30-18-403. Approval of plan of conversion.** — (1) A plan of conversion is not effective unless it has been approved:

(a) By a domestic converting entity:

- (i) In accordance with the requirements, if any, in its organic rules for approval of a conversion;
- (ii) If its organic rules do not provide for approval of a conversion, in accordance with the requirements, if any, in its organic law and organic rules for approval of:

1. In the case of an entity that is not a business corporation, a merger, as if the conversion were a merger; or

2. In the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation, as if the conversion were that type of a merger; or

(iii) If neither its organic law nor organic rules provide for approval of

a conversion or a merger described in subparagraph (ii)2. of this paragraph, by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(b) In a record, by each interest holder of a domestic converting entity that will have interest holder liability for liabilities that arise after the conversion becomes effective, unless, in the case of an entity that is not a business or nonprofit corporation:

(i) The organic rules of the entity provide in a record for the approval of a conversion or a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and

(ii) The interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.

(2) A conversion of a foreign converting entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.

#### History.

I.C., § 30-18-403, as added by 2007, ch. 116, § 1, p. 333; am. 2008, ch. 36, § 10, p. 82.

**Compiler's Notes.** Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

The 2008 amendment, by ch. 36, added

paragraphs (1)(a)(ii)1. and (a)(ii)2.; in paragraph (1)(a)(iii), inserted "described in subparagraph (ii)2. of this paragraph"; in the introductory paragraph in paragraph (1)(b), added "unless, in the case of an entity that is not a business or nonprofit corporation"; and added paragraphs (1)(b)(i) and (1)(b)(ii).

### OFFICIAL COMMENT

1. **In General** — As is the case with the other types of transactions authorized by this act, there are three possible ways to obtain approval (defined in Section 102(3) [§ 30-18-102(3)]) of a conversion by a domestic entity. The first is to determine if the organic rules (defined in Section 102(27) [§ 30-18-102(27)]) of the converting entity contain specific approval provisions for conversions. If they exist, then those provisions apply to approval of the plan of conversion. See Section 403(a)(1)(A) [§ 30-18-403(1)(a)(i)]. If there are no provisions in the organic rules for approval of a conversion, then the provisions for approval of a merger in either the organic law (defined in Section 102(26) [§ 30-18-102(26)]) or organic rules of the entity will apply. Section 403(a)(1)(B) [§ 30-18-403(1)(a)(ii)]. If there are no approval provisions for conversions in the entity's organic rules and no approval provisions for mergers in the entity's organic law or organic rules, then unanimous consent of all the entity's interests holders is required. Section 403(a)(1)(C) [§ 30-18-403(1)(a)(iii)].

In the case of a foreign entity that is converting into another type of entity in this

jurisdiction, the required approval is determined by the laws of the foreign entity's jurisdiction of organization. Section 403(b) [§ 30-18-403(2)].

If approval of a conversion occurs under subsection (a)(1)(B) [(1)(a)(ii)], the approval provisions for mergers that will apply will not include provisions on "short-form" mergers. A short-form merger involves a merger between a subsidiary and a parent that controls a large majority of the interests in the subsidiary (typically at least 80 or 90%). In those cases, the parent is permitted to merge with the subsidiary without the need for the governors or interest holders of the subsidiary to approve the merger. Because a conversion is a single-party transaction, short-form merger procedures are inapposite and it was not considered necessary to confirm that expressly in the statutory text (unlike in the case of interest exchanges, which are two-party transactions — see Section 303(d) [§ 30-18-303(4)]).

2. **Section 403(a)(2)** [§ 30-18-403(1)(b)] — See Comment 2 to Section 203 [§ 30-18-203] for an explanation of this interest holder liability provision.



## IDAHO REPORTER'S COMMENT

**Section 30-18-403** The reader should review the Idaho comment to Section 30-18-103.

**30-18-404. Amendment or abandonment of plan of conversion — Statement of abandonment.** — (1) A plan of conversion of a domestic converting entity may be amended:

(a) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(b) By the governors or interest holders of the entity in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the plan that will change:

(i) The amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing, to be received by any of the interest holders of the converting entity under the plan;

(ii) The public organic document or private organic rules of the converted entity that will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or

(iii) Any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(2) After a plan of conversion has been approved by a domestic converting entity and before a statement of conversion becomes effective, the plan may be abandoned:

(a) As provided in the plan; or

(b) Unless prohibited by the plan, in the same manner as the plan was approved.

(3) If a plan of conversion is abandoned after a statement of conversion has been filed with the secretary of state and before the filing becomes effective, a statement of abandonment, signed on behalf of the entity, must be filed with the secretary of state before the time the statement of conversion becomes effective. The statement of abandonment takes effect upon filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain:

(a) The name of the converting entity;

(b) The date on which the statement of conversion was filed; and

(c) A statement that the conversion has been abandoned in accordance with this section.

**History.**

I.C., § 30-18-404, as added by 2007, ch. 116, § 1, p. 333.

**Compiler's Notes.** Section 12 of S.L. 2007,

ch. 116, provided that the act should take effect on and after July 1, 2007.

## OFFICIAL COMMENT

This section parallels analogous provisions in Articles 2 [Parts] (mergers), 3 (interest exchanges), and 5 (domestications).

**30-18-405. Statement of conversion — Effective date.** — (1) A statement of conversion must be signed on behalf of the converting entity and filed with the secretary of state.

(2) A statement of conversion must contain:

(a) The name, jurisdiction of organization, and type of the converting entity;

(b) The name, jurisdiction of organization, and type of the converted entity;

(c) If the statement of conversion is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than ninety (90) days after the date of filing;

(d) If the converting entity is a domestic entity, a statement that the plan of conversion was approved in accordance with this part or, if the converting entity is a foreign entity, a statement that the conversion was approved by the foreign converting entity in accordance with the law of its jurisdiction of organization;

(e) If the converted entity is a domestic filing entity, the text of its public organic document, as an attachment;

(f) If the converted entity is a domestic limited liability partnership, the text of its statement of qualification, as an attachment; and

(g) If the converted entity is a foreign entity that is not a qualified foreign entity, a mailing address to which the secretary of state may send any process served on the secretary of state pursuant to section 30-18-406(5), Idaho Code.

(3) In addition to the requirements of subsection (2) of this section, a statement of conversion may contain any other provision not prohibited by law.

(4) If the converted entity is a domestic entity, its public organic document, if any, must satisfy the requirements of the law of this state, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic document.

(5) A plan of conversion that is signed on behalf of a domestic converting entity and meets all of the requirements of subsection (2) of this section may be filed with the secretary of state instead of a statement of conversion and upon filing has the same effect. If a plan of conversion is filed as provided in this subsection (5), references in this chapter to a statement of conversion refer to the plan of conversion filed under this subsection (5).

(6) A statement of conversion becomes effective upon the date and time of filing or the later date and time specified in the statement of conversion.

**History.**

I.C., § 30-18-405, as added by 2007, ch. 116, § 1, p. 333; am. 2008, ch. 36, § 11, p. 83.

**Compiler's Notes.** Section 12 of S.L. 2007,

ch. 116, provided that the act should take effect on and after July 1, 2007.

The 2008 amendment, by ch. 36, added paragraph (2)(g).

## OFFICIAL COMMENT

1. **In General** — The filing of a statement of conversion makes the transaction a matter of public record. The mandatory requirements for a statement of conversion are set forth in subsection (b) [(2)]. They are essentially the same as the requirements for a statement of merger in Section 205 [§ 30-18-205].

2. **Section 405(b)(3) and (f) [§ 30-18-405(2)(c) and (6)]**— The effective date and time of a statement of conversion are the date and time of its filing, unless otherwise speci-

fied. If a delayed effective date is specified, the statement of conversion is effective on that date and time, subject to the 90 day maximum delayed effective date in Section 405(b)(3) [§ 30-18-405(2)(c)].

3. **Section 405(e) [§ 30-18-405(5)]** — A plan of conversion can be used as a substitute for the statement of conversion so long as the plan satisfies the requirements in subsection (e) [(5)].

## IDAHO REPORTER'S COMMENT

**Section 30-18-405(4)** Other than the few exceptions specified in this section, the public organic document of an entity must comply with all existing statutory and regulatory requirements. For example, Idaho requires identification of the statutory agent and governors for various entities.

**30-18-406. Effect of conversion.** — (1) When a conversion becomes effective:

(a) The converted entity is:

(i) Organized under and subject to the organic law of the converted entity; and

(ii) The same entity without interruption as the converting entity;

(b) All property of the converting entity continues to be vested in the converted entity without transfer, conveyance, assignment, reversion or impairment;

(c) All liabilities of the converting entity continue as liabilities of the converted entity;

(d) Except as provided by law other than this chapter or the plan of conversion, all of the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;

(e) The name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

(f) If a converted entity is a filing entity, its public organic document is effective and is binding on its interest holders;

(g) If the converted entity is a limited liability partnership, its statement of qualification is effective simultaneously;

(h) The private organic rules of the converted entity that are to be in a record, if any, approved as part of the plan of conversion are effective and are binding on and enforceable by:

(i) Its interest holders; and

(ii) In the case of a converted entity that is not a business corporation or nonprofit corporation, any other person that is a party to an agreement that is part of the entity's private organic rules; and

(i) The interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under section 30-18-109, Idaho Code, and the converting entity's organic law.



(2) Except as otherwise provided in the organic law or organic rules of the converting entity, the conversion does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding-up of the converting entity.

(3) When a conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of a conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the conversion becomes effective.

(4) When a conversion becomes effective:

(a) The conversion does not discharge any interest holder liability under the organic law of a domestic converting entity to the extent the interest holder liability arose before the conversion became effective;

(b) A person does not have interest holder liability under the organic law of a domestic converting entity for any liability that arises after the conversion becomes effective;

(c) The organic law of a domestic converting entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (a) of this subsection as if the conversion had not occurred; and

(d) A person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of the domestic converting entity with respect to any interest holder liability preserved under paragraph (a) of this subsection as if the conversion had not occurred.

(5) When a conversion becomes effective, a foreign entity that is the converted entity:

(a) May be served with process in this state for the collection and enforcement of any of its liabilities; and

(b) Appoints the secretary of state as its agent for service of process for collecting or enforcing those liabilities.

(6) If the converting entity is a qualified foreign entity, the certificate of authority or other foreign qualification of the converting entity is canceled when the conversion becomes effective.

(7) A conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

#### **History.**

I.C., § 30-18-406, as added by 2007, ch. 116, § 1, p. 333; am. 2008, ch. 36, § 12, p. 83.

**Compiler's Notes.** Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

The 2008 amendment, by ch. 36, in paragraphs (1)(b) and (1)(c), inserted "converted"; deleted former paragraph (1)(f), which formerly read: "Unless otherwise provided by

the organic law of the converting entity, the conversion does not cause the dissolution of the converting entity" and made related redesignations; in the introductory paragraph in paragraph (1)(h), added "and enforceable by"; added the paragraph (1)(h)(i) designation and paragraph (1)(h)(ii); in paragraph (1)(i), added "and the converting entity's organic law"; and added subsection (7).

#### **OFFICIAL COMMENT**

**1. In General** — A converted entity is the same entity as it was before the conversion; it

just has a different legal form. The legal effects of this are set forth in subsection (a)

[(1)]. The converted entity remains the owner of all real and personal property and remains subject to all the liabilities, actual or contingent, of the converted entity. A conversion is not a conveyance, transfer, or assignment. It does not give rise to claims of reverter or impairment of title based on a prohibited conveyance or transfer. It does not give rise to a claim that a contract with the converting entity is no longer in effect on the ground of nonassignability, unless the contract specifically provides that it does not survive a conversion. The contract rights that remain in the converted entity include, without limitation, the right to enforce subscription agreements for interests and obligations to make capital contributions entered into or incurred before the conversion.

When a conversion becomes effective, the internal affairs of the converting entity are no longer governed by its former organic law but instead by the organic law of the converted entity. As a result, filings that may have been made under the organic law of the converting entity, such as the following, will no longer be effective: a statement of qualification as a limited liability partnership under Section 1001 of the Uniform Partnership Act (1997), a statement of partnership authority under Section 303 of the Uniform Partnership Act (1997) or a statement of authority under Section 5 of the Uniform Unincorporated Non-profit Association Act.

**2. Section 406(a)(5) [§ 30-18-406(1)(e)]** — All pending proceedings involving the converting entity are continued. The name of the converted entity may be, but need not be,

substituted in any pending proceeding for the name of the converting entity.

**3. Section 406(c) [§ 30-18-406(3)]** — Subsection (c) [(3)] provides the rule for future interest holder liability and parallels analogous provisions in Articles [Parts] 2 (mergers), 3 (interest exchanges), and 5 (domestications). See Comment 6 to Section 206 [§ 30-18-206].

**4. Section 406(d) [§ 30-18-406(4)]** — Subsection (d) [(4)] provides the rule for past interest holder liability and parallels analogous provisions in Articles [Parts] 2 (mergers), 3 (interest exchanges), and 5 (domestications). See Comment 7 to Section 206 [§ 30-18-206].

**5. Section 406(e) [§ 30-18-406(5)]** — When a domestic converting entity becomes a foreign entity as a result of a conversion, some mechanism is needed to facilitate the enforcement of claims by the creditors and interest holders of the converting entity. Section 406(d) [§ 30-6-406(4)], which parallels analogous provisions in Articles [Parts] 2 (mergers) and 5 (domestications), authorizes service of process for all such claims in this state, and designates the Secretary of State of this state as the agent for service of process in the event the converted entity cannot be otherwise served in this state.

**6. Section 406(g) [§ 30-18-406(7)]** — When a conversion takes effect, the entity continues to exist — simply in a different form. Section 406(g) [§ 30-18-406(7)] thus makes clear that the conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

## PART 5. DOMESTICATION

**30-18-501. Domestication authorized.** — (1) Except as otherwise provided in this section, by complying with this part, a domestic entity may become a domestic entity of the same type in a foreign jurisdiction if the domestication is authorized by the law of the foreign jurisdiction.

(2) Except as otherwise provided in this section, by complying with the provisions of this part applicable to foreign entities a foreign entity may become a domestic entity of the same type in this state if the domestication is authorized by the law of the foreign entity's jurisdiction of organization.

(3) When the term "domestic entity" is used in this part with reference to a foreign jurisdiction, it means an entity whose internal affairs are governed by the law of the foreign jurisdiction.

(4) If a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to a domestication, the provision applies to a domestication of the entity as if the domestication were a merger until the provision is amended after the effective date of this chapter.

**History.**

I.C., § 30-18-501, as added by 2007, ch. 116, § 1, p. 333.

**Compiler's Notes.** Section 12 of S.L. 2007,

ch. 116, provided that the act should take effect on and after July 1, 2007.

**OFFICIAL COMMENT**

**1. In General** — A domestication authorized by Article [Part] 5 differs from a conversion in that a domestication requires that the domesticating entity be the same type of entity as the domesticated entity. In a conversion, by contrast, the converting entity changes its type.

As with a conversion, all rights and privileges, debts and liabilities, and actions or proceedings of a domesticating entity vest unimpaired in the domesticated entity. A domestication is not a sale, transfer, assignment, or conveyance and does not give rise to a claim of reverter or impairment of title.

Article [Part] 5 governs the legal effect of a foreign entity domesticating in a jurisdiction adopting this act. On the other hand, the organic laws of the foreign jurisdiction, and not Article [Part] 5, will govern the legal effect of a domestication of a domestic entity in another jurisdiction. In the latter scenario, Article [Part] 5 authorizes the domestication of the domestic entity in the foreign jurisdic-

tion, but Article [Part] 5 does not create a right in the domestic entity to be received in the foreign jurisdiction. Similarly, Section 501 [§ 30-18-501] does not provide a right on the part of a foreign entity to become a domestic entity if the domestication is not authorized by the laws of the foreign jurisdiction. If the foreign jurisdiction does not authorize a domestication transaction, a domestication can still be accomplished by forming a new entity of the same type in the new state and merging the existing entity into the new entity.

**2. Section 501(d) [§ 30-18-501(4)]** — See Comment 4 to Section 301(d) [§ 30-18-301(4)].

**3. Section 501(e) [not adopted]** — Subsection (e) [(5)] is an optional provision that may be used to exclude certain types of entities from engaging in domestication transactions. A provision that excludes certain types of entities from the act generally is set forth in Section 110 [§ 30-18-110].

**30-18-502. Plan of domestication.** — (1) A domestic entity may become a foreign entity in a domestication by approving a plan of domestication. The plan must be in a record and contain:

- (a) The name and type of the domesticating entity;
- (b) The name and jurisdiction of organization of the domesticated entity;
- (c) The manner of converting the interests in the domesticating entity into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;
- (d) The proposed public organic document of the domesticated entity if it is a filing entity;
- (e) The full text of the private organic rules of the domesticated entity that are proposed to be in a record;
- (f) The other terms and conditions of the domestication; and
- (g) Any other provision required by the law of this state or the organic rules of the domesticating entity.

(2) A plan of domestication may contain any other provision not prohibited by law.

**History.**

I.C., § 30-18-502, as added by 2007, ch. 116, § 1, p. 333.

**Compiler's Notes.** Section 12 of S.L. 2007,

ch. 116, provided that the act should take effect on and after July 1, 2007.

**OFFICIAL COMMENT**

**1. In General** — This section sets forth the requirements for the plan of domestication, which must be approved by the domesticating

entity in accordance with Section 503 [§ 30-18-503]. The content of a plan of domestication is similar to the content of a plan of



merger. *See* Section 202 [§ 30-18-202]. Subsection (a) [(1)] lists the mandatory provisions that must be in the plan. Subsection (b) [(2)] authorizes the plan to contain any other provision the parties wish to include, unless the provision is prohibited by law.

**2. Section 502(a)(3) [§ 30-18-502(1)(c)]** — Interest holders in the domesticating entity may receive interests or other securities of the domesticated entity or any other person, obligations, rights to acquire interests or

other securities, cash, or other property. *See also* Comment 3 to Section 202 [§ 30-18-202].

**3. Filing the Plan of Domestication** — The plan of domestication, may, but need not, be filed instead of the statement of domestication (Section 505 [§ 30-18-505]) so long as it contains all of the information required to be in the statement and is delivered to the Secretary of State for filing after the plan has been adopted and approved. *See* Section 505(e) [§ 30-18-505(5)].

**30-18-503. Approval of plan of domestication.** — (1) A plan of domestication is not effective unless it has been approved:

(a) By a domestic domesticating entity:

(i) In accordance with the requirements, if any, in its organic rules for approval of a domestication;

(ii) If its organic rules do not provide for approval of a domestication, in accordance with the requirements, if any, in its organic law and organic rules for approval of:

1. In the case of an entity that is not a business corporation, a merger, as if the domestication were a merger; or

2. In the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation, as if the domestication were that type of merger; or

(iii) If neither its organic law nor organic rules provide for approval of a domestication or a merger described in subparagraph (ii)2. of this paragraph, by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(b) In a record, by each interest holder of a domestic domesticating entity that will have interest holder liability for liabilities that arise after the domestication becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit corporation:

(i) The organic rules of the entity in a record provide for the approval of a domestication or merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and

(ii) The interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.

(2) A domestication of a foreign domesticating entity is not effective unless it is approved in accordance with the law of the foreign entity's jurisdiction of organization.

**History.**

I.C., § 30-18-503, as added by 2007, ch. 116, § 1, p. 333; am. 2008, ch. 36, § 13, p. 85.

**Compiler's Notes.** Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

The 2008 amendment, by ch. 36, in paragraph (1)(a)(ii), added the paragraph (1)(a)(ii)1. designation, and therein, added "In

the case of an entity that is not a business corporation"; added paragraph (1)(a)(ii)2.; in paragraph (1)(a)(iii), inserted "described in subparagraph (ii)2. of this paragraph"; in the introductory paragraph in paragraph (1)(b), added "unless, in the case of an entity that is not a business corporation or nonprofit corporation"; and added paragraphs (1)(b)(i) and (1)(b)(ii).

## OFFICIAL COMMENT

1. **Section 503(a) [§ 30-18-503(1)]** — As is the case with the other types of transactions authorized by this act, there are three possible ways to obtain approval (defined in Section 102(3) [§ 30-18-102(3)]) of a domestication by a domestic entity. The first is to determine if the organic rules (defined in Section 102(27) [§ 30-18-102(27)]) of the domesticating entity contain specific approval provisions for a domestication. If they exist, then those provisions apply to approval of the plan of domestication. Section 503(a)(1)(A) [(1)(a)(i)]. If there are no domestication approval provisions, then the approval process for a merger in either the entity's organic law (defined in Section 102(26) [§ 30-18-102(26)]) or organic rules will apply. Section 503(a)(1)(B) [(1)(a)(ii)]. If there are no specific domestication approval provisions in the entity's organic rules and no merger approval provisions in the entity's organic law or organic rules, then unanimous consent of all the entity's interest holders is required. Section 503(a)(1)(C) [(1)(a)(iii)].

In the case of a foreign entity that is domesticating in this state, the required approval is

determined by the laws of the foreign entity's jurisdiction of organization. Section 503(b) [(2)].

If approval of a domestication occurs under subsection (a)(1)(B) [(1)(a)(ii)], the approval provisions for mergers that will apply will not include provisions on "short-form" mergers. A short-form merger involves a merger between a subsidiary and a parent that controls a large majority of the interests in the subsidiary (typically at least 80 or 90%). In those cases, the parent is permitted to merge with the subsidiary without the need for the governors or interest holders of the subsidiary to approve the merger. Because a domestication is a single-party transaction, short-form merger procedures are inapposite and it was not considered necessary to confirm that in the statutory text (unlike in the case of interest exchanges, which are two-party transactions — see Section 303(d) [§ 30-18-303(4)]).

2. **Section 503(a)(2) [§ 30-18-503(1)(b)]** — See Comment 2 to Section 203 [§ 30-18-203] for an explanation of this interest holder liability provision.

## IDAHO REPORTER'S COMMENT

**Section 30-18-503** The reader should review the Idaho comment to Section 30-18-103.

**30-18-504. Amendment or abandonment of plan of domestication — Statement of abandonment.** — (1) A plan of domestication of a domestic domesticating entity may be amended:

(a) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(b) By the governors or interest holders of the entity in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the domestication is entitled to vote on or consent to any amendment of the plan that will change:

(i) The amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing, to be received by any of the interest holders of the domesticating entity under the plan;

(ii) The public organic document or private organic rules of the domesticated entity that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the interest holders of the domesticated entity under its organic law or organic rules; or

(iii) Any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(2) After a plan of domestication has been approved by a domestic domesticating entity and before a statement of domestication becomes effective, the plan may be abandoned:

(a) As provided in the plan; or

(b) Unless prohibited by the plan, in the same manner as the plan was approved.

(3) If a plan of domestication is abandoned after a statement of domestication has been filed with the secretary of state and before the filing becomes effective, a statement of abandonment, signed on behalf of the entity, must be filed with the secretary of state before the time the statement of domestication becomes effective. The statement of abandonment takes effect upon filing, and the domestication is abandoned and does not become effective. The statement of abandonment must contain:

(a) The name of the domesticating entity;

(b) The date on which the statement of domestication was filed; and

(c) A statement that the domestication has been abandoned in accordance with this section.

**History.**

I.C., § 30-18-504, as added by 2007, ch. 116, § 1, p. 333.

**Compiler's Notes.** Section 12 of S.L. 2007,

ch. 116, provided that the act should take effect on and after July 1, 2007.

**OFFICIAL COMMENT**

This section parallels analogous provisions in Articles [Parts] 2 (mergers), 3 (interest exchanges), and 4 (conversions).

**30-18-505. Statement of domestication — Effective date.** — (1) A statement of domestication must be signed on behalf of the domesticating entity and filed with the secretary of state.

(2) A statement of domestication must contain:

(a) The name, jurisdiction of organization, and type of the domesticating entity;

(b) The name and jurisdiction of organization of the domesticated entity;

(c) If the statement of domestication is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than ninety (90) days after the date of filing;

(d) If the domesticating entity is a domestic entity, a statement that the plan of domestication was approved in accordance with this part or, if the domesticating entity is a foreign entity, a statement that the domestication was approved in accordance with the law of its jurisdiction of organization;

(e) If the domesticated entity is a domestic filing entity, its public organic document, as an attachment;

(f) If the domesticated entity is a domestic limited liability partnership, its statement of qualification, as an attachment; and

(g) If the domesticated entity is a foreign entity that is not a qualified foreign entity, a mailing address to which the secretary of state may send any process served on the secretary of state pursuant to section 30-18-506(5), Idaho Code.

(3) In addition to the requirements of subsection (2) of this section, a



statement of domestication may contain any other provision not prohibited by law.

(4) If the domesticated entity is a domestic entity, its public organic document, if any, must satisfy the requirements of the law of this state, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic document.

(5) A plan of domestication that is signed on behalf of a domesticating domestic entity and meets all of the requirements of subsection (2) of this section may be filed with the secretary of state instead of a statement of domestication and upon filing has the same effect. If a plan of domestication is filed as provided in this subsection (5), references in this chapter to a statement of domestication refer to the plan of domestication filed under this subsection (5).

(6) A statement of domestication becomes effective upon the date and time of filing or the later date and time specified in the statement of domestication.

#### History.

I.C., § 30-18-505, as added by 2007, ch. 116, § 1, p. 333; am. 2008, ch. 36, § 14, p. 86.

**Compiler's Notes.** Section 12 of S.L. 2007,

ch. 116, provided that the act should take effect on and after July 1, 2007.

The 2008 amendment, by ch. 36, added paragraph (2)(g).

### OFFICIAL COMMENT

1. **In General** — The filing of a statement of domestication makes the transaction a matter of public record. The mandatory requirements for a statement of domestication are set forth in subsection (b) [(2)]. They are essentially the same as the requirements for a statement of merger in Section 205 [§ 30-18-205].

2. **Section 505(b)(3) and (e) [§ 30-18-505(2)(c) and (5)]** — The effective date and time of a statement of domestication are the

date and time of its filing, unless otherwise specified. If a delayed effective date is specified, the statement of domestication is effective on that date and time, subject to the 90 day maximum delayed effective date in Section 505(b)(3) [(2)(c)].

3. **Section 505(e) [§ 30-18-505(5)]** — A plan of domestication can be used as a substitute for the statement of domestication so long as the plan satisfies the requirements in subsection (e) [(5)].

### IDAHO REPORTER'S COMMENT

**Section 30-18-505(4)** Other than the few exceptions specified in this section, the public organic document of an entity must comply with all existing statutory and regulatory requirements. For example, Idaho requires identification of the statutory agent and governors for various entities.

**30-18-506. Effect of domestication.** — (1) When a domestication becomes effective:

(a) The domesticated entity is:

(i) Organized under and subject to the organic law of the domesticated entity; and

(ii) The same entity without interruption as the domesticating entity;

(b) All property of the domesticating entity continues to be vested in the entity without transfer, conveyance, assignment, reversion or impairment;

(c) All liabilities of the domesticating entity continue as liabilities of the entity;

(d) Except as provided by law other than this chapter or the plan of domestication, all of the rights, privileges, immunities, powers and purposes of the domesticating entity remain in the domesticated entity;

(e) The name of the domesticated entity may be substituted for the name of the domesticating entity in any pending action or proceeding;

(f) If the domesticated entity is a filing entity, its public organic document is effective and is binding on its interest holders;

(g) If the domesticated entity is a limited liability partnership, its statement of qualification is effective simultaneously;

(h) The private organic rules of the domesticated entity that are to be in a record, if any, approved as part of the plan of domestication are effective and are binding on and enforceable by:

(i) Its interest holders; and

(ii) In the case of a domesticated entity that is not a business corporation or nonprofit corporation, any other person that is a party to an agreement that is part of the domesticated entity's private organic rules; and

(i) The interests in the domesticating entity are converted to the extent and as approved in connection with the domestication, and the interest holders of the domesticating entity are entitled only to the rights provided to them under the plan of domestication and to any appraisal rights they have under section 30-18-109, Idaho Code, and the domesticating entity's organic law.

(2) Except as otherwise provided in the organic law or organic rules of the domesticating entity, the domestication does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding-up of the domesticating entity.

(3) When a domestication becomes effective, a person that did not have interest holder liability with respect to the domesticating entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of the domestication has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the domestication becomes effective.

(4) When a domestication becomes effective:

(a) The domestication does not discharge any interest holder liability under the organic law of a domesticating domestic entity to the extent the interest holder liability arose before the domestication became effective;

(b) A person does not have interest holder liability under the organic law of a domestic domesticating entity for any liability that arises after the domestication becomes effective;

(c) The organic law of a domestic domesticating entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (a) of this subsection as if the domestication had not occurred; and

(d) A person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of a domestic domesticating entity with respect to any interest holder liability preserved under paragraph (a) of this subsection as if the domestication had not occurred.

(5) When a domestication becomes effective, a foreign entity that is the domesticated entity:

(a) May be served with process in this state for the collection and enforcement of any of its liabilities; and

(b) Appoints the secretary of state as its agent for service of process for collecting or enforcing those liabilities.

(6) If the domesticating entity is a qualified foreign entity, the certificate of authority or other foreign qualification of the domesticating entity is canceled when the domestication becomes effective.

(7) A domestication does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

#### History.

I.C., § 30-18-506, as added by 2007, ch. 116, § 1, p. 333; am. 2008, ch. 36, § 15, p. 87.

**Compiler's Notes.** Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

The 2008 amendment, by ch. 36, deleted paragraph (1)(f), which formerly read: "Unless otherwise provided by the organic law of

the domesticating entity, the domestication does not cause the dissolution of the domesticating entity" and made related redesignations; in the introductory paragraph in paragraph (1)(h), added "and enforceable by"; added the paragraph (1)(h)(i) designation and paragraph (1)(h)(ii); in paragraph (1)(i), added "and the domesticating entity's organic law"; and added subsection (7).

### OFFICIAL COMMENT

1. **Section 506(a)(1) [§ 30-18-506(1)(a)]** — The domesticated entity is the same entity as the domesticating entity; it has merely changed its jurisdiction of organization.

2. **Section 506(a)(2) [§ 30-18-506(1)(b)]** — A domestication is not a sale, conveyance, transfer, or assignment and does not give rise to claims of reverter or impairment of title that may be based on a prohibition on transfer, assignment, or conveyance.

3. **Section 506(a)(4) [§ 30-18-506(1)(d)]** — All pending proceedings involving the domesticating entity are continued. The name of the domesticated entity may be, but need not be, substituted in any pending proceeding for the name of the domesticating entity.

4. **Section 506(a)(9) [§ 30-18-506(1)(i)]** — The interests of the domesticating entity are reclassified into whatever rights were negotiated in the domestication and the interest holders of the domesticating entity are only entitled to those rights. Section 506(a)(9) [(1)(i)], on its face, allows certain owners in the domesticating entity to be entitled to a continuing equity interest in the domesticated entity whereas other owners in the domesticating entity may be cashed out as a result of the transaction.

5. **Section 506(c) [§ 30-18-506(3)]** — Subsection (c) [(3)] provides the rule for future interest holder liability and parallels analogous provisions in Articles [Parts] 2 (mergers), 3 (interest exchanges), and 4 (conversions).

ers), 3 (interest exchanges), and 4 (conversions). See Comment 6 to Section 206 [§ 30-18-206].

6. **Section 506(d) [§ 30-18-506(4)]** — Subsection (d) [(4)] provides the rule for past interest holder liability and parallels analogous provisions in Articles [Parts] 2 (mergers), 3 (interest exchanges), and 4 (conversions). See Comment 7 to Section 206 [§ 30-18-206].

7. **Section 506(e) [§ 30-18-506(5)]** — When a domestic domesticating entity becomes a foreign entity as a result of a domestication, some mechanism is needed to facilitate the enforcement of claims by the creditors and interest holders of the domesticating entity. Section 506(d) [(4)], which parallels analogous provisions in Articles [Parts] 2 (mergers) and 4 (conversions), authorizes service of process for all such claims in this state, and designates the Secretary of State of this state as the agent for service of process in the event the domesticated entity cannot be otherwise served in this state.

8. **Section 506(g) [§ 30-18-506(7)]** — When a domestication takes effect, the entity continues to exist — simply as a domestic entity under the laws of a different state. Section 506(g) [(7)] thus makes clear that the domestication does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.



## PART 6. (RESERVED)

## PART 7. MISCELLANEOUS PROVISIONS

**30-18-701. Consistency of application.** — In applying and construing this chapter, consideration must be given to the need to promote consistency of the law with respect to its subject matter among states that enact it.

**History.**

I.C., § 30-18-701, as added by 2007, ch. 116, § 1, p. 333.

**Compiler's Notes.** Section 12 of S.L. 2007,

ch. 116, provided that the act should take effect on and after July 1, 2007.

**30-18-702. Relation to electronic signatures in global and national commerce act.** — This chapter modifies, limits and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. section 7001, et seq., but does not modify, limit or supersede section 101(c) of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b).

**History.**

I.C., § 30-18-702, as added by 2007, ch. 116, § 1, p. 333; am. 2008, ch. 36, § 16, p. 88.

The 2008 amendment, by ch. 36, made

minor technical corrections in the style of the federal citations.

**Compiler's Notes.** Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

**30-18-703. Requirements for filing of documents.** — (1) To be entitled to filing by the secretary of state, a document must satisfy the following requirements and the requirements of any other provision of this chapter that adds to or varies these requirements:

- (a) This chapter requires or permits filing the document in the office of the secretary of state.
- (b) The document contains the information required by this chapter and may contain other information.
- (c) The document is in a record.
- (d) The document is in the English language, but the name of an entity need not be in English if written in English letters or Arabic or Roman numerals.
- (e) The document is signed:
  - (i) By an officer of a domestic or foreign corporation;
  - (ii) By a person authorized by a domestic or foreign entity that is not a corporation; or
  - (iii) If the entity is in the hands of a receiver, trustee, or other court appointed fiduciary, by that fiduciary.
- (f) The document must state the name and capacity of the person that signed it. The document may contain a corporate seal, attestation, acknowledgment, or verification.
- (g) The document must be delivered to the office of the secretary of state for filing. Delivery may be made by electronic transmission if and to the extent permitted by the secretary of state. If a document is filed in

typewritten or printed form and not transmitted electronically, the secretary of state may require one (1) exact or conformed copy to be delivered with the document.

(2) When a document is delivered to the office of the secretary of state for filing, the correct filing fee required to be paid therewith by this chapter or other law must be paid or provision for payment made in a manner permitted by the secretary of state.

#### **History.**

I.C., § 30-18-703, as added by 2007, ch. 116, § 1, p. 333.

**Compiler's Notes.** Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

### **OFFICIAL COMMENT**

#### **1. Form of documents.**

A document may be filed in typewritten or printed form through physical delivery to the Secretary of State or by electronic transmission. Electronic transmission includes the evolving methods of electronic delivery, including facsimile transmissions, electronic transmissions between computers via modems and filings through delivery of magnetic tapes or computer diskettes, all as may be permitted by the Secretary of State. To be eligible for filing, a document must be typed or printed or electronically transmitted in a format that can be retrieved or reproduced in typewritten or printed form and in the English language (except to the limited extent permitted by subsection (a)(4) [(1)(d)]). The Secretary of State is not authorized to prescribe forms (except to the extent permitted by Section A1-2 [§ 30-18-704]) and as a result may not reject documents on the basis of form (see Section A1-6 [§ 30-18-708]) if they contain the information called for by the specific statutory requirement and meet the minimal formal requirements of this section.

#### **2. Signature.**

To be filed a document must be signed by the appropriate person. No specific officer is designated as the appropriate person to sign in the case of a corporation. Similarly, an unincorporated entity is given the authority to designate the person to sign on its behalf. See Section 102(35) [§ 30-18-102(35)] for a description of the manner in which a document may be "signed."

The requirement in some state statutes that documents must be acknowledged or verified as a condition for filing has been eliminated. These requirements serve little purpose in connection with documents filed

under organic laws. On the other hand, many organizations, like lenders or title companies, may desire that specific documents include acknowledgements, verifications, or seals; subsection (a)(6) [(1)(f)] therefore provides that the addition of these forms of execution does not affect the eligibility of the document for filing.

#### **3. Contents.**

A document must be filed by the Secretary of State if it contains the information required by this act. The document may contain additional information or statements and their presence is not ground for the Secretary of State to reject the document for filing. These documents must be accepted for filing even though the Secretary of State believes that the language is illegal or unenforceable. In view of this very limited discretion granted to Secretaries of State under this section, Section A1-6(d) [§ 30-18-708(4)] defines the Secretary of State's role as "ministerial" and provides that no inference or presumption arises from the fact that the Secretary of State accepted a document for filing. See the Comments to Sections A1-6 and A1-8 [§§ 30-18-708 and 30-18-710].

#### **4. Number of copies.**

The Secretary of State is permitted to require an exact or conformed copy if the document is being filed in typewritten or printed form, providing the secretary of state flexibility to determine whether or not such copies serve any purpose. There is no such requirement with respect to documents transmitted electronically. Under subsection (a)(7) [(1)(g)] an "exact" copy is a reproduction of the executed original document; a "conformed" copy is a copy on which the existence of signatures is entered or noted on the copy.

**30-18-704. Forms.** — The secretary of state may prescribe and furnish, on request, forms for documents required or permitted to be filed by this chapter but their use is not mandatory.

**History.**  
I.C., § 30-18-704, as added by 2007, ch. 116, § 1, p. 333.

**Compiler's Notes.** Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

OFFICIAL COMMENT

As described in the Comments to Section A1-1 [§ 30-18-703], documents are entitled to filing if they meet the substantive and formal requirements of this act; they may also contain additional information if the person submitting the document so elects. In these circumstances it is not appropriate to vest the

Secretary of State with general authority to establish mandatory forms for use under the act. This section authorizes (but does not require) the Secretary of State to prepare forms suitable for filing under the act. However, the use of these forms is permissive and cannot be required by the Secretary of State.

**30-18-705. Filing, service and copying fees.** — (1) The secretary of state shall collect a fee of ten dollars (\$10.00) each time process is served on the secretary of state under this chapter. The party to a proceeding causing service of process may recover this fee as costs if the party prevails in the proceeding.

(2) The secretary of state shall collect the following fees for copying and certifying the copy of any document filed under this chapter:

- (a) Twenty-five cents (25¢) per page for copying; and
- (b) Ten dollars (\$10.00) for the certificate.

(3) The secretary of state shall collect the following fees when the documents described are delivered for filing:

- (a) Statement of merger ..... \$30.00
- (b) Statement of abandonment of merger ..... \$30.00
- (c) Statement of interest exchange ..... \$30.00
- (d) Statement of abandonment of interest exchange ..... \$30.00
- (e) Statement of conversion ..... \$30.00
- (f) Statement of abandonment of conversion ..... \$30.00
- (g) Statement of domestication ..... \$30.00
- (h) Statement of abandonment of domestication ..... \$30.00

**History.**  
I.C., § 30-18-705, as added by 2007, ch. 116, § 1, p. 333.

**Compiler's Notes.** Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

OFFICIAL COMMENT

This section establishes the filing fees for all documents that may be filed under the act. The dollar amounts for each document should be inserted by each state as it adopts the act.

Subsection (b) [(2)] establishes standard fees for copying filed documents and certifying that the copies are true copies. The dollar amounts for these services should be conformed to the fees charged for similar services under other provisions of law.

The documents filed under this act are referred to as “statements” in order to differentiate them from filings under corporation laws, which are typically referred to as “articles,” and from filings under partnership and other unincorporated entity laws, which are typically referred to as “certificates.”

**30-18-706. Effective time and date of document.** — Except as provided in section 30-18-707, Idaho Code, a document accepted for filing is effective:



- (1) At the date and time of filing, as evidenced by the means used by the secretary of state for recording the date and time of filing;
- (2) At the time specified in the document as its effective time on the date it is filed;
- (3) At a specified delayed effective time and date if permitted by this chapter; or
- (4) If a delayed effective date but no time is specified, at the close of business on the date specified.

**History.**

I.C., § 30-18-706, as added by 2007, ch. 116, § 1, p. 333.

**Compiler's Notes.** Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

**OFFICIAL COMMENT**

Documents accepted for filing become effective at the date and time of filing, or at another specified time on that date, unless a delayed effective date is selected. This section gives express statutory authority to the common practice of most Secretaries of State of ignoring processing time and treating a document as effective as of the date it is submitted for filing even though it may not be reviewed and accepted for filing until several days later.

This section requires Secretaries of State to maintain some means of recording the date

and time of filing of documents and provides that documents become effective at the recorded time on the date of filing. This provision should eliminate any doubt about situations involving same-day transactions in which a document, for example, a statement of merger, is filed on the morning of the date the merger is to become effective. This section contemplates that the time of filing, as well as the date, will be routinely recorded.

Paragraph (3) does not authorize or contemplate the retroactive establishment of an effective date before the date of filing.

**30-18-707. Correcting filed document.** — (1) A domestic or foreign entity may correct a document filed by the secretary of state if:

- (a) The document contains an inaccuracy;
- (b) The document was defectively signed; or
- (c) The electronic transmission of the document to the secretary of state was defective.

(2) A document is corrected by filing with the secretary of state a statement of correction that:

- (a) Describes the document to be corrected and states its filing date or has attached a copy of the document;
- (b) Specifies the inaccuracy or defect to be corrected; and
- (c) Corrects the inaccuracy or defect.

(3) A statement of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, a statement of correction is effective when filed.

**History.**

I.C., § 30-18-707, as added by 2007, ch. 116, § 1, p. 333.

**Compiler's Notes.** Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

**OFFICIAL COMMENT**

This section permits making corrections in filed documents without refileing the entire

document. Under subsection (c) [(3)], the correction relates back to the original effective

date of the document being corrected, except as to persons relying on the original document and adversely affected by the correction. As to these persons, the effective date of the statement of correction is the date the statement is filed.

A document may be corrected either because it contains an inaccuracy or because it was defectively executed (including defects in optional forms of execution that do not affect the eligibility of the original document for filing). In addition, the document may be corrected if its electronic transmission was defective. This is intended to cover the situation where an electronic filing is made but, due to a defect in transmission, the filed document is later discovered to be inconsis-

tent with the document intended to be filed. If no filing is made because of a defect in transmission, a statement of correction may not be used to make a retroactive filing. Therefore, an entity making an electronic filing should take steps to confirm that the filing was received by the Secretary of State.

A provision in a document setting an effective date may be corrected under this section, but the corrected effective date must comply with the requirements of this act limiting delayed effective dates to within 90 days after filing. A corrected effective date is thus measured from the date of the original filing of the document being corrected, *i.e.*, it cannot be before the date of filing of the document or more than 90 days thereafter.

**30-18-708. Filing duty of secretary of state.** — (1) A document delivered to the office of the secretary of state for filing that satisfies the requirements of section 30-18-703, Idaho Code, must be filed by the secretary of state.

(2) The secretary of state files a document by recording it as filed on the date and time of receipt. After filing a document, the secretary of state shall deliver to the domestic or foreign entity or its representative a copy of the document with an acknowledgment of the date and time of filing.

(3) If the secretary of state refuses to file a document, the secretary of state shall return the document to the domestic or foreign entity or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason for the refusal.

(4) The duty of the secretary of state to file documents under this section is ministerial. The filing or refusal to file a document does not:

- (a) Affect the validity or invalidity of the document in whole or in part;
- (b) Relate to the correctness or incorrectness of information contained in the document; or
- (c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

**History.**

I.C., § 30-18-708, as added by 2007, ch. 116, § 1, p. 333.

**Compiler's Notes.**

Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

**OFFICIAL COMMENT**

**1. Filing duty in general.**

Under this section the Secretary of State is required to file a document if it "satisfies the requirements of Section A1-1 [§ 30-18-703]." The purpose of this language is to limit the discretion of the Secretary of State to a ministerial role in reviewing the contents of documents. If the document submitted is in the form prescribed and contains the information required by Section A1-1 [§ 30-18-703] and the applicable provision of this act, the Secretary of State must file it even though it contains additional provisions the Secretary

of State may feel are irrelevant or not authorized by the act or by general legal principles. Consistently with this approach, subsection (d) [(4)] states that the filing duty of the Secretary of State is ministerial and provides that filing a document with the Secretary of State does not affect the validity or invalidity of any provision contained in the document and does not create any presumption with respect to any provision. Persons adversely affected by provisions in a document may test their validity in a proceeding appropriate for that purpose. Similarly, the attorney general

of the state may also question the validity of provisions of documents filed with the Secretary of State in an independent suit brought for that purpose; in neither case should any presumption or interference be drawn about the validity of the provision from the fact that the Secretary of State accepted the document for filing.

## 2. Mechanics of filing.

Subsection (b) [(2)] provides that when the Secretary of State files a document, the Secretary of State records it as filed on the date and time of receipt, retains the original document for the state's records, and delivers a copy of the document to the entity or its representative with an acknowledgement of the date and time of filing. In the case of a document transmitted electronically, delivery may be made by electronic transmission. The copy returned will be the exact or conformed copy if one has been required by the Secretary of State, or will be a copy made by the Secretary of State if an exact or conformed copy was not required. Of course, a person desiring a certified copy of any filed document may obtain it from the office of the Secretary of State by paying the fee prescribed in Section A1-3(b) [§ 30-018-705(2)].

## 3. Elimination of certificates and similar documents.

**30-18-709. Appeal from refusal to file a document.** — (1) If the secretary of state refuses to file a document delivered for filing, the domestic or foreign entity that submitted the document for filing may appeal the refusal within thirty (30) days after the return of the document to the fourth judicial district court of Ada county. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the explanation of the secretary of state for the refusal to file. Notice of the petition shall be provided to the secretary of state.

(2) The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

### History.

I.C., § 30-18-709, as added by 2007, ch. 116, § 1, p. 333.

Subsection (b) [(2)] provides that acceptance of a filing is evidenced merely by the issuance of a fee receipt or acknowledgement of receipt if no fee is required. The act does not provide for the Secretary of State to issue a formal certificate of filing. A single document — the fee receipt or acknowledgement — should sufficiently indicate that the document has been accepted for filing.

## 4. Rejection of document by Secretary of State.

Because of the simplification of formal filing requirements and the limited discretion granted to the Secretary of State by this act, it is probable that rejection of documents for filing will occur only rarely. Subsection (c) [(3)] provides that if the Secretary of State does reject a document for filing, the Secretary of State must return it to the entity or its representative within five days together with a brief written explanation of the reason for rejection. In the case of a document transmitted electronically, rejection of the document may be made electronically by the Secretary of State or by a mailing to the entity. A rejection may be the basis of judicial review under Section A1-7 [§ 30-18-709].

**Compiler's Notes.** Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

## OFFICIAL COMMENT

### 1. The court with jurisdiction to hear appeals from the Secretary of State.

The identity of the specific court with jurisdiction to hear appeals from the Secretary of State under this section must be supplied by each state when enacting this section. It is intended that this should be a court of general civil jurisdiction. It may either be the court

located in the capital of the state or the court in the county where the entity's principal business office is located in the state or, if the entity does not have a principal office in the state, the court located in the county in which its registered office is located.

### 2. "Summary" orders.

In view of the limited discretion of the



Secretary of State under the act, a “summary” order appears to be appropriate under this section. The word “summary” is not used in a technical sense but to refer to a class of cases where the court might appropriately order that action be taken on the face of the pleadings or after an oral hearing but without any need to resolve disputed factual issues.

### 3. Burden of proof and review standard.

The act does not address either the burden of proof or the standard for review in judicial proceedings challenging action of the Secretary of State. It is contemplated that these matters will be governed by general principles of judicial review of agency action in each adopting state.

**30-18-710. Evidentiary effect of copy of filed document.** — A certificate from the secretary of state, delivered with a copy of a document filed by the secretary of state, may be relied upon as prima facie evidence that the original document is on file with the secretary of state.

#### History.

I.C., § 30-18-710, as added by 2007, ch. 116, § 1, p. 333.

#### Compiler’s Notes.

Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

### OFFICIAL COMMENT

The Secretary of State may be requested to certify that a specific document has been filed upon payment of the fees specified in Section A1-3(c) [§ 30-18-705(3)]. This section provides that the certificate is conclusive evidence only that the document is on file. The

limited effect of the certificate is consistent with the ministerial filing obligation imposed on the Secretary of State under the act. The certificate from the Secretary of State, as well as the copy of the document, may be delivered by electronic transmission.

**30-18-711. Penalty for signing false document.** — A person commits a misdemeanor punishable by a fine of not to exceed five hundred dollars (\$500) if the person signs a document the person knows is false in any material respect with intent that the document be delivered to the secretary of state for filing.

#### History.

I.C., § 30-18-711, as added by 2007, ch. 116, § 1, p. 333.

#### Compiler’s Notes.

Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

### OFFICIAL COMMENT

This section makes it a criminal offense for any person to sign a document that he knows is false in any material respect with intent that the document be submitted for filing to the secretary of state. As provided in Section 102(35) [§ 30-18-102(35)], “sign” includes any manual, facsimile, conformed or electronic signature.

This section is keyed to the classification of offenses provided by the Model Penal Code. If a state has not adopted this classification, the dollar amount of the fine should be substituted for the misdemeanor classification.

**30-18-712. Powers of secretary of state.** — The secretary of state has the power reasonably necessary to perform the duties required by this chapter.

#### History.

I.C., § 30-18-712, as added by 2007, ch. 116, § 1, p. 333.

#### Compiler’s Notes.

Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

OFFICIAL COMMENT

This section is intended to grant the Secretary of State the authority necessary for the efficient performance of the filing and other duties imposed by the act, but is not intended to provide general authority to establish public policy. The most important aspects of modern organic laws relate to the creation and

maintenance of relationships among persons interested in or involved with an entity; these relationships basically should be a matter of concern to the parties involved and not subject to regulation or interpretation by the Secretary of State.

**30-18-713. Savings clause.** — This chapter does not affect an action or proceeding commenced or right accrued before the effective date of this chapter.

**History.**

I.C., § 30-18-713, as added by 2007, ch. 116, § 1, p. 333.

**Compiler's Notes.**

Section 12 of S.L. 2007, ch. 116, provided that the act should take effect on and after July 1, 2007.

CHAPTER 19

SUCCESSOR CORPORATION ASBESTOS-RELATED LIABILITY FAIRNESS ACT

SECTION.

- 30-1901. Short title.
- 30-1902. Definitions.
- 30-1903. Applicability.
- 30-1904. Limitations on successor asbestos-related liabilities.

SECTION.

- 30-1905. Establishing fair market value of total gross assets.
- 30-1906. Adjustment.
- 30-1907. Scope of chapter — Application.

**30-1901. Short title.** — This act shall be known and may be cited as the “Successor Corporation Asbestos-Related Liability Fairness Act.”

**History.**

I.C., § 30-1901, as added by 2012, ch. 193, § 1, p. 520.

**Compiler's Notes.**

The term “this act” refers to S.L. 2012, ch. 193, which is codified as §§ 30-1901 to 30-1907.

S.L. 2012, chapter 193 became law without the signature of the governor, effective July 1, 2012.

**30-1902. Definitions.** — As used in this section, the following terms shall mean:

- (1) “Asbestos claim” means any claim, wherever or whenever made, for damages, losses, indemnification, contribution or other relief arising out of, based on, or in any way related to asbestos, including:
  - (a) The health effects of exposure to asbestos, including a claim for:
    - (i) Personal injury or death;
    - (ii) Mental or emotional injury;
    - (iii) Risk of disease or other injury; or
    - (iv) The costs of medical monitoring or surveillance;
  - (b) Any claim made by, or on behalf of, any person exposed to asbestos, or a representative, spouse, parent, child or other relative of the person; and
  - (c) Any claim for damage or loss caused by the installation, presence, or removal of asbestos.
- (2) “Corporation” means a corporation for profit, including a domestic

corporation organized under the laws of this state or a foreign corporation organized under laws other than the laws of this state.

(3) "Successor" means a corporation that assumes or incurs or has assumed or incurred successor asbestos-related liabilities that is a successor and became a successor before January 1, 1972, or is any of that successor corporation's successors.

(4) "Successor asbestos-related liabilities" means any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, that are related in any way to asbestos claims and were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation with or into another corporation, or that are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined pursuant to section 30-1905, Idaho Code, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by a successor of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in this state or another jurisdiction.

(5) "Transferor" means a corporation from which the successor asbestos-related liabilities are or were assumed or incurred.

**History.**

I.C., § 30-1902, as added by 2012, ch. 193,  
§ 1, p. 520.

**Compiler's Notes.** S.L. 2012, chapter 193  
became law without the signature of the gov-  
ernor, effective July 1, 2012.

**30-1903. Applicability.** — (1) The limitations in section 30-1904, Idaho Code, shall apply to any successor corporation.

(2) The limitations of section 30-1904, Idaho Code, shall not apply to:

(a) Worker's compensation benefits paid by, or on behalf of, an employer to an employee under the provisions of title 72, Idaho Code, or a comparable worker's compensation law of another jurisdiction;

(b) Any claim against a corporation that does not constitute a successor asbestos-related liability;

(c) Any obligation under the national labor relations act, 29 U.S.C. section 151 et seq., as amended, or under any collective bargaining agreement; or

(d) A successor that, after a merger or consolidation, continued in the business of mining asbestos or in the business of selling or distributing asbestos fibers or in the business of manufacturing, distributing, removing, or installing asbestos-containing products that were the same as those products previously manufactured, distributed, removed, or installed by the transferor.

**History.**

I.C., § 30-1903, as added by 2012, ch. 193,  
§ 1, p. 520.

**Compiler's Notes.** S.L. 2012, chapter 193  
became law without the signature of the gov-  
ernor, effective July 1, 2012.



**30-1904. Limitations on successor asbestos-related liabilities. —**

(1) Except as further limited in subsection (2) of this section, the cumulative successor asbestos-related liabilities of a successor corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. The successor corporation does not have responsibility for successor asbestos-related liabilities in excess of this limitation.

(2) If the transferor has assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, then the fair market value of the total assets of the prior transferor determined as of the time of the earlier merger or consolidation shall be substituted for the limitation set forth in subsection (1) of this section for purposes of determining the limitation of liability of a successor corporation.

**History.**

I.C., § 30-1904, as added by 2012, ch. 193,  
§ 1, p. 520.

**Compiler's Notes.** S.L. 2012, chapter 193

became law without the signature of the governor, effective July 1, 2012.

**30-1905. Establishing fair market value of total gross assets. —**

(1) A successor corporation may establish the fair market value of total gross assets for the purpose of the limitations under section 30-1904, Idaho Code, through any method reasonable under the circumstances, including:

- (a) By reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arms-length transaction; or
- (b) In the absence of other readily available information from which the fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

(2) Total gross assets include intangible assets.

(3) To the extent total gross assets include any liability insurance that was issued to the transferor whose assets are being valued for purposes of this section, the applicability, terms, conditions and limits of such insurance shall not be affected by this statute, nor shall this statute otherwise affect the rights and obligations of an insurer, transferor or successor under any insurance contract and/or any related agreements, including, without limitation, preenactment settlements resolving coverage-related disputes, and the rights of an insurer to seek payment for applicable deductibles, retrospective premiums or self-insured retentions or to seek contribution from a successor for uninsured or self-insured periods or periods where insurance is uncollectible or otherwise unavailable. Without limiting the foregoing, to the extent total gross assets include any such liability insurance, a settlement of a dispute concerning any such liability insurance coverage entered into by a transferor or successor with the insurers of the transferor before the effective date of this act shall be determinative of the total coverage of such liability insurance to be included in the calculation of the transferor's total gross assets.

<p><b>History.</b> I.C., § 30-1905, as added by 2012, ch. 193, § 1, p. 520.</p>	<p><b>Compiler's Notes.</b> S.L. 2012, chapter 193 became law without the signature of the governor, effective July 1, 2012.</p>
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**30-1906. Adjustment.** — (1) Except as provided in subsections (2) through (4) of this section, the fair market value of total gross assets at the time of the merger or consolidation shall increase annually at a rate equal to the sum of:

- (a) The prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation, unless the prime rate is not published in that edition of the Wall Street Journal, in which case any reasonable determination of the prime rate on the first day of the year may be used; and
  - (b) One percent (1%).
- (2) The rate enumerated in subsection (1) of this section shall not be compounded.

(3) The adjustment of the fair market value of total gross assets shall continue as provided in subsection (1) of this section until the date the adjusted value is first exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by, or on behalf of, the successor corporation or a predecessor or by, or on behalf of, a transferor after the time of the merger or consolidation for which the fair market value of total gross assets is determined.

(4) No adjustment of the fair market value of total gross assets shall be applied to any liability insurance that may be included in the definition of total gross assets by subsection (3) of section 30-1905, Idaho Code.

<p><b>History.</b> I.C., § 30-1906, as added by 2012, ch. 193, § 1, p. 520.</p>	<p><b>Compiler's Notes.</b> S.L. 2012, chapter 193 became law without the signature of the governor, effective July 1, 2012.</p>
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**30-1907. Scope of chapter — Application.** — (1) The courts of this state shall construe the provisions of this act liberally with regard to successors.

(2) This act shall apply to all asbestos claims filed against a successor on or after the effective date of this act and to any pending asbestos claims against a successor in which trial has not commenced as of the effective date of this act, except that any provisions of these sections which would be unconstitutional if applied retroactively shall be applied prospectively.

<p><b>History.</b> I.C., § 30-1907, as added by 2012, ch. 193, § 1, p. 520.</p>	<p>S.L. 2012, chapter 193 became law without the signature of the governor, effective July 1, 2012.</p>
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**Compiler's Notes.** The term "this act" refers to S.L. 2012, ch. 193, which is codified as §§ 30-1901 to 30-1907.

































